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Ontario Equal Commission regarding labor disputes

Hearings

v. 40.

May 1987



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ROYAL COMMISSION
INQUIRY INTO LABOUR DISPUTES

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HEARINGS HELD AT
TORONTO

VOL. NO.

DATE

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May 18, 1967

Official Reporters

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IN THE MATTER OF The Public
Inquiries Act, R.S.O. 1960,
Ch. 323

- and -

IN THE MATTER OF an Inquiry
Into Labour Disputes

BEFORE:

The Honourable Ivan C. Rand,
Commissioner, at 123 Edward
Street, Toronto, Ontario, on
Thursday, May 18th, 1967

E. Marshall Pollock

Counsel for the Commission

APPEARANCES:

Mr. K.B. Paulin, Past-
President

) The Hamilton Construction
) Association

Mr. E.L. Stringer, Counsel

Mr. William Menard, Pres.

) Southern Ontario Port

Mr. Angus Cameron, Vice-
President

) Council

Mr. J.F. Doucette,
Recording Secretary

Mr. A.S. Murray,
Secretary-Treasurer

Mr. Springer, Teamsters'
Local 938.

Toronto, Ontario,

Thursday, May 18th, 1967

---On commencing at 10:00 a.m.

MR. POLLOCK: The Hamilton Construction Association, John W. Hennessey, General Manager, Edwin L. Stringer, Counsel and I understand that Mr. K.B. Paulin, Past-President of the Hamilton Construction Association will also be presenting the brief.

MR. STRINGER: Yes. If it pleases you, Mr. Commissioner and Mr. Counsel, my name is E.L. Stringer and I am appearing as Counsel for the Association and I have with me Mr. Paulin, the Past-President of the Association.

It is our intention, sir, with your leave, to present our brief in two parts, Mr. Paulin proceeding first, with the first part and I will then proceed with the second part. I think if I just sit down, Mr. Paulin may go ahead.

MR. PAULIN: Mr. Commissioner, Mr. Counsel, I would like to waive the opening remarks and come to the part I section. I would like to present this as you see fit. They are in sections of problems. Would you like me to stop at the end of each section for any questions that may be proper at that time, or continue through the whole presentation?

MR. POLLOCK: I think perhaps you can stop, as you suggest. It might make more sense in the transcript if you discuss them at that time.

MR. PAULIN: I might explain, too, sir,

1 that anything of a legal nature will be handled by
2 Mr. Stringer in a later section and mine will be
3 a layman's viewpoint on some of the problems as they
4 exist.

5 MR. POLLOCK: Well, if I ask a legal
6 question, then, perhaps Mr. Stringer can field it
7 and put it in his brief case for the second part.

8 MR. PAULIN: Thank you, sir. May I
9 proceed?

10 (Mr. Paulin reads brief from "Presentation to the
11 Rand Commission..." down to "...job operation allowed
12 to continue.")

13
14 MR. POLLOCK: He threatened these
15 employees that unless they quit the job site, there
16 would be a \$500 fine, is that right?

17 MR. PAULIN: By telephone he threatened
18 them that if they returned to the job site they would
19 be subject to a \$500 fine.

20 MR. POLLOCK: And what was the result
21 of the threat?

22 MR. PAULIN: Well, the men themselves
23 were so incensed they were willing to take him to task.
24 Actually, they went so far as to put in my hands
25 written affidavits that this was the case. I, of
26 course, never attempted to process that because of
27 the ramifications that could exist among the
28 individuals. I know that it was a true action.

29 MR. POLLOCK: And the jurisdictional
30 dispute was between the carpenters and some other union,

1 is that right?

2 MR. PAULIN: It was actually a
3 geographical dispute as to a border-line case, an
4 area, it was in Oakville and it could have been under
5 Toronto jurisdiction or under Hamilton jurisdiction
6 and the action was taken from the power politics
7 within the union and nothing whatsoever to do with
8 the collective agreement on the job site.

9 MR. POLLOCK: So both business agents
10 were from the carpenters and joiners?

11 MR. PAULIN: That is correct, both
12 locals. The business agent who took action happened
13 to be from the Toronto area but both locals were,
14 shall we say, claiming jurisdiction on the Oakville
15 job site.

16 MR. POLLOCK: But it was an internal
17 dispute between two locals of the carpenters' union?

18 MR. PAULIN: That is correct.

19 (Mr. Paulin reads brief from "Case History No. 2" down
20 to "...was forced to leave the job.")

21
22 MR. POLLOCK: For what reason was
23 he blackballed in New York City? //

24 MR. PAULIN: I have no idea, sir. He
25 was an excellent workman at job site according to
26 the information and was asked to leave the job because
27 of the fact that internal action would be taken
28 against him.

29 MR. POLLOCK: He wasn't a member in
30 good standing any more at that time?

1 MR. PAULIN: That is about what it
2 was, yes, sir.

3 THE COMMISSIONER: And that black-
4 balling extended to what, all over North America?

5 MR. PAULIN: I would think so, sir,
6 I think that is a very real statement.

7 THE COMMISSIONER: The international,
8 I suppose, is confined to Canada and the United States?

9 MR. PAULIN: Well, to my knowledge,
10 as an employer I do not know how far afield this would
11 go but I do believe it would be within North America
12 anyhow.

13 MR. POLLOCK: I don't know of any
14 Mexican unions.

15 MR. PAULIN: May I proceed, sir?

16 MR. POLLOCK: Yes.

17 (Mr. Paulin continues reading brief from "Case History
18 No. 3", down to "...action by their own union" page 2.)
19

20 MR. POLLOCK: This was a construction
21 site, was it, Hamilton Steel Company?

22 MR. PAULIN: Yes.

23 MR. POLLOCK: It was an unsanctioned
24 activity by the pipe fitters, was it?

25 MR. PAULIN: That is right.

26 MR. POLLOCK: Renegades I take as
27 bein unsanctioned. And all tradesmen refused to cross?

28 MR. PAULIN: Originally they did, but
29 action was taken with the threat to serve an injunction
30 on several trades and they returned to work on the

1 insistence of their business agent so there was some
2 return.

3 THE COMMISSIONER: What was the
4 evidence that their own union would resort to punitive
5 action?

6 MR. PAULIN: What was the evidence?

7 THE COMMISSIONER: What was the
8 evidence of that?

9 MR. PAULIN: Well, any workman is
10 frightened to cross a picket line as a bastion of ---

11 THE COMMISSIONER: Even if it is
12 illegal?

13 MR. PAULIN: Yes, sir.

14 THE COMMISSIONER: That is all I wanted
15 to know.

16 MR. POLLOCK: Did the legitimate
17 government of the pipe fitters take any action
18 against these people, these renegades, do you know?

19 MR. PAULIN: If I may, sir, I have
20 in the audience, with your permission, behind me,
21 several gentlemen who were directly involved in
22 this situation and who employed members of 67 and
23 I wonder if I might direct your question to one of
24 them?

25 MR. POLLOCK: Certainly.

26 MR. PAULIN: Mr. Reid, would you like
27 to answer that?

28 MR. REID: The government of the union,
29 as we call it, sanctioned this walkout, sanctioned
30 the picket line. This is at the local union level.

1 MR. POLLOCK: I see. And what about
2 the international representative of that union?

3 MR. REID: We believe that it was
4 approved. We have never been able to establish
5 that proof.

6 MR. POLLOCK: So it is really not
7 a renegade action: It is a sanctioned activity
8 of the local even though it was illegal?

9 MR. REID: The officers of the local
10 sanctioned it.

11 MR. POLLOCK: I see.

12 THE COMMISSIONER: Well, just what
13 was the trouble?

14 MR. REID: There was a non-union
15 contractor on the site of the Steel Company who
16 installed some work. There were some 16 other
17 contractors on the site that employed union labour.
18 The dispute was between the local union of pipe
19 fitters disputing that the owner didn't have a right
20 to allow a non-union contractor to perform work on
21 that site.

22 THE COMMISSIONER: Of any kind?

23 MR. REID: Of any kind, we will
24 clarify it to construction work. They established
25 a picket line on which the signs were not directed
26 to any single employer: It was just, "Unfair to
27 Organized Labour", and all trades in my company and
28 for most of the companies, did not cross the picket
29 line. As Mr. Paulin has pointed out, after threat
30 of an injunction a few men did but the majority did

1 not until the picket line was removed.

2 MR. POLLOCK: What was the contractual
3 status? Did they have any position so far as their
4 assertion that non-union contractors are not to
5 be employed on the job?

6 MR. REID: No, their contractual
7 status was with each of the individual employers.

8 MR. POLLOCK: What about the general
9 contractors?

10 MR. REID: They were acting as
11 general contractors. We act for the main part, as
12 general contractors, separate to the Steel Company.

13 MR. POLLOCK: There is no overall
14 contract that provides that only union contractors
15 will be employed on this site?

16 MR. REID: No, not insofar as the
17 owner is concerned. The owner awards these separate
18 contracts to different parties.

19 MR. POLLOCK: Do you have any agreement
20 with the unions that would indicate that you will not
21 work on sites where non-union contractors are?

22 MR. REID: No.

23 THE COMMISSIONER: There were, of
24 course, members of the pipe fitters union on the
25 job?

26 MR. REID: Yes, employed by a
27 number of the contractors of these 16. There were
28 some 5 or 6 that employed members of local union 67
29 pipe fitters directly.

30 MR. POLLOCK: I take it, that this

1 non-union contractor was in some way doing pipe fitters'
2 work as well?

3 MR. REID: Yes, he installed the
4 coils, a relatively minor thing, I might say. The
5 total value was something in the order of \$700.

6 MR. PAULIN: Mr. Reid, was there not
7 some question that there were not mechanics in
8 sufficient numbers that some of these people gravitated
9 to help in a push program? In my understanding
10 there might be some thought in that.

11 MR. REID: Not to my knowledge.

12 MR. PAULIN: Thank you.

13 MR. POLLOCK: Go ahead, Mr. Paulin.

14 (Mr. Paulin reads brief from "Point of Reference No. 2"
15 down to "...prevailing economic conditions" page 3.)
16

17 MR. PAULIN: Now I can expand a
18 little extraneously. 1964 was considered 100
19 per cent a trade/^{year}with which I am familiar. Labourers
20 at that time were 85 cents. Today it is \$2.70.
21 The reflection of their increased wages is not
22 reflected in productivity necessarily. According
23 to all standards of the gross national product,
24 the formula that we apply to the cost of living
25 index, this seems to have been an inflated spiral
26 in all trades within the construction industry. We
27 have no reflection of a reduction when a work load
28 is not present to alleviate some of the economic
29 pressures. There is no way the employer has
30 an escalation clause in his contract and the fluctuation

1 in the relationship to meet the economic condition is
2 not there: It is lacking entirely.

3 MR. POLLOCK: What is the average
4 take-home pay per year of a labourer?

5 MR. PAULIN: The rates, of course,
6 vary. I can tell you that a good carpenter in my
7 employ, who is making approximately \$3.70 an hour,
8 if he is a first class mechanic makes anywhere from
9 \$8000 to \$12,000 a year. I know that in some of the
10 electrical and mechanical trades, which will be
11 covered later, due to economic conditions they make
12 far more than that. It is not a secondrate job: It
13 is a firstclass job.

14 MR. POLLOCK: What about the labourer
15 who is not a carpenter?

16 MR. PAULIN: The labourer today, at
17 \$2.70 reflected, I would say, he is making from \$6000
18 to \$9000.

19 MR. POLLOCK: Is that an average?

20 MR. PAULIN: No, I said a good
21 labourer. Some of these labourers, because of their
22 attitudes, do not want to work constantly because of
23 the fact that they are moving in geographical areas
24 but I would say - I am talking Hamilton now and I
25 would imagine Toronto is more than that - but a good
26 labourer in my area could make \$6000 to \$9000 a year.

27 MR. STRINGER: May I address you on
28 this point for a minute, Mr. Counsel? I have engaged
29 in negotiations with the labourers' union in Hamilton
30 and I have had a business agent of that labourers'

1 union tell me during negotiations, that they wanted
2 to be laid off at the end of, say, the road building
3 season, so that they could collect unemployment
4 insurance. This was part of their bargaining wish.
5 We were discussing the issue of seniority at the time
6 and the introduction of the issue of seniority in
7 construction is something new but in this particular
8 situation, the business agent made the clear statement
9 to me that they didn't care about the overall economic
10 position, what they wanted was a certain rate during
11 the road building season and then they wanted to be
12 laid off so that they could collect unemployment
13 insurance. I was shocked at the statement but it
14 was made to me unequivocally.

15 MR. POLLOCK: How long is the
16 road building season?

17 MR. STRINGER: It varies. I would
18 say it was from the middle of April into November -
19 8 to 9 months.

20 MR. POLLOCK: So they have four
21 month's holiday in the wintertime?

22 MR. STRINGER: Yes, and the company
23 pays for it.

24 MR. POLLOCK: It is put to us that
25 one of the reasons for high hourly rates in construction
26 is because the activity is dependent so much on
27 climate and you only have a limited period in which
28 to earn an annual salary.

29 MR. PAULIN: May I speak to that?

30 MR. POLLOCK: This includes rain during

1 the building season as well as winter. Yes, go ahead.

2 MR. PAULIN: With winter works
3 incentive, the construction industry has prepared
4 winter protection so that lost time, on an architectural
5 or industrial site, lost time is not a large factor.
6 The workman today loses very little time due to
7 weather conditions, other than an extreme rain or
8 an extreme snow storm. In some instances some of
9 the trades do not climb, for instance in structural
10 steel, because of cold, but normally, the heating,
11 the protection to the worker and the clothes he now
12 wears allow him to work 11 to 12 months a year. It
13 is not really a factor any more, I would not say.

14 MR. POLLOCK: If, as Mr. Stringer
15 suggests, it is the desire to go on unemployment
16 insurance and then there is this availability of
17 work throughout the year, aren't they obliged to
18 take employment when it is offered to them?

19 MR. PAULIN: Obligated? I would say
20 this, sir, that road builders are a little different
21 from the architectural and industrial section of
22 our industry. The road builders are allowed to
23 work 45 hours a week and make up that time in any
24 following two weeks. In our industry, if the time
25 is lost and we lose the completion date, we are
26 forced to think of overtime in order to catch up
27 for the lapse in lost time. It is a little
28 different situation.

29 MR. POLLOCK: I think probably
30 because, in road building you can't build roads

1 during wintertime.

2 MR. PAULIN: This is right.

3 MR. STRINGER: To answer your
4 question, though, Mr. Pollock, which was: Are these
5 people who go on unemployment insurance not obligated
6 to take work as it is offered to them, I would have
7 to say that in law this is so, but as a practical
8 matter it just does not seem to occur.

9 THE COMMISSIONER: Are these matters
10 subject to inspection by officers of the board?

11 MR. STRINGER: Mr. Commissioner, I
12 have long questioned the efficacy of the investigation
13 machinery which has been set up. I think it is in
14 many cases, quite lax.

15 THE COMMISSIONER: You ought to put
16 in an application to have all income returns made
17 public. That is the only reasonable way to find
18 out what the income is per year.

19 MR. STRINGER: It is quite a problem,
20 sir.

21 MR. POLLOCK: The Manpower people,
22 have they divided the construction worker into such
23 a level, that is there is no road building work
24 or a road building construction worker does not
25 have to go on something else?

26 MR. STRINGER: I would not think so,
27 Mr. Pollock but I cannot answer that question with
28 any certainty. I would not think so. By the same
29 token we must recognize that historically, and even
30 at the present time, there is still less work in the

1 wintertime than there is in the summertime, and
2 therefore, I would imagine there is not the same
3 availability of work and it is probably considerably
4 easier for people to avoid work in the wintertime
5 than it is in the summertime.

6 MR. POLLOCK: With the increase--
7 with the improvement in the method of construction
8 that would permit construction work other than
9 road building to continue throughout the year, is
10 there a greater tendency to employ -- for a
11 construction company to employ its own employees
12 rather than draw these from the pool of the union?

13 MR. PAULIN: I may generalize in
14 this area, Mr. Pollock: The successful construction
15 company must screen a great number of members of
16 craft unions in order to secure a nucleus for
17 responsible positions from foremen to supervision.
18 Due to the transient nature of our business, I looked
19 at my own account last year and I employed 900 men
20 during the course of the year for a peak load of
21 300. Some of these men worked for me for as little
22 as two weeks, depending on the work load presenting
23 itself to my company, but I think any successful
24 operation must have a nucleus which they find work
25 for at very low prices sometimes in order to keep
26 these men around them so that we can meet a work
27 load when it presents itself. Am I talking in the
28 area you wanted the answer to?

29 MR. POLLOCK: I wondered whether it
30 would extend much beyond the key personnel exercising

1 supervisory functions.

2 MR. PAULIN: I would certainly say
3 so. Particularly with the lack of skilled tradesmen
4 that we are encountering today, we do try very
5 definitely to keep men gainfully employed because
6 once we lose them, they usually turn up someplace
7 else and we cannot get them back readily. It is
8 a real problem.

9 THE COMMISSIONER: The figures which
10 you gave, were they confined to this nucleus or is
11 that spread over the maximum?

12 MR. PAULIN: I employ primarily
13 carpenters, bricklayers, labourers. I am referring
14 to my own labour payroll. I have no control over
15 the sub-contractors that work through my office, but
16 my employable force was 900 of which a peak load
17 of 300 is what I meant.

18 THE COMMISSIONER: You would not
19 say that outside of that nucleus they made between
20 \$6000 and \$9000 a year, when they are taken on for
21 two weeks at a time?

22 MR. PAULIN: Of course, they work
23 for me for two weeks and they work for Mr. Pollock
24 for two months and they work for Mr. Stringer for
25 four months.

26 THE COMMISSIONER: Is the situation
27 such that they can have continuous employment?

28 MR. PAULIN: I would certainly say
29 a good mechanic, if I may use that word, in any
30 craft trade, can secure almost constant employment.

1 MR. POLLOCK: What about an average
2 mechanic?

3 MR. PAULIN: Well, of course, we are
4 all concerned with the educational plateau of some
5 of these so-called craft unions and I cannot answer
6 that. I think a man has to be qualified in order
7 to be employable, and the qualification is perhaps
8 something that should be upgraded.

9 MR. POLLOCK: Of the number of
10 carpenters that exist in Hamilton, what percentage
11 would you rate as good mechanics?

12 MR. PAULIN: I have not experienced
13 exposure to all of them and that is a very difficult
14 question to answer. I would say we have a
15 responsible union in our local in Hamilton and that
16 there is a problem of the social misfit, if you will,
17 but not in great proportion. An educated guess would
18 be 80 to 85 per cent.

19 MR. POLLOCK: 80 to 85 per cent make
20 that figure of \$6000 to \$9000?

21 MR. PAULIN: Oh, they make more than
22 that, as a carpenter. I said \$8000 to \$12,000. The
23 labourer was \$6000 to \$9000. //

24 MR. POLLOCK: \$8000 to \$12,000.

25 MR. PAULIN: Yes, sir.

26 (Mr. Paulin continues reading the brief from "The "
27 monopoly permits different unions.." down to "...at
28 the job site.", on page 4.)

29
30 MR. POLLOCK: What is the objection of

1 having the type of determination made as is suggested
2 in the first two cases, on an other than local,
3 geographic basis? As long as it is a standard set-up
4 you would think it would eliminate considerably
5 jurisdictional problems.

6 MR. PAULIN: Mr. Pollock, let us
7 take this great country of ours and go into the
8 north country. In the City of Toronto, Metropolitan
9 area, there is fragmentation which recognizes a
10 tremendous amount of so-called crafts, but in the
11 north country a labourer may be a rodman, he may
12 be a cement finisher, he may be several things in
13 order to have gainful employment, and he is so
14 recognized in that area -- North Bay on, for example.
15 Unless it is a heavily populated area there is a
16 different interpretation to his jurisdiction, and
17 this, of course, must be maintained in order for,
18 first of all, the employee to be gainfully employed
19 and secondly, for the employer in bidding practices,
20 to know where he stands.

21 MR. POLLOCK: I understand that so
22 far as northern or isolated areas are concerned but
23 is there any reason why there ought to be a difference
24 between the assignment of work jurisdiction in the
25 City of Toronto and Hamilton and London and Windsor --
26 and the larger cities?

27 MR. PAULIN: There is a difference
28 in taxation at the municipal level, there should be
29 a difference in economic impact in these areas. The
30 travelling for a worker in Toronto can be far in

1 excess of what it is to the man in London.

2 MR. POLLOCK: That would determine
3 the rate they are going to be paid?

4 MR. PAULIN: Oh, you are referring
5 to the jurisdictional work load?

6 MR. POLLOCK: That is right.

7 MR. PAULIN: Mr. Stringer points out
8 to me, and rightly so, that the liaison between the
9 employer and the union could resolve many of these
10 difficulties, if it were put into the agreement
11 and spelled out right to the last letter. At the
12 present time it is not in the collective agreement
13 and many of these problems arise because of an inter-
14 pretation by the business agent. He refers back
15 for resolution, and the resolution varies from year
16 to year and person to person. That is why I mention
17 this case history might be beneficial in Ontario
18 to resolve many of the things that happened to shut
19 our job sites down.

20 MR. POLLOCK: I think that is
21 probably true. I think there is still an existing
22 area of intention when you get new tactics developed,
23 but surely, on the old tactics the jurisdictions
24 can be allotted without having overlapping
25 contractual arrangements entered into by contractors
26 saying, "I will give the plasterers all their
27 traditional jurisdiction and the carpenters all their
28 traditional jurisdictions and leave it to a fight
29 at the job site to determine what their jurisdiction
30 is".

1 MR. STRINGER: May I discuss this
2 with you for a moment, Mr. Pollock? There are a
3 number of problems involved in this situation. Firstly,
4 one objection is that in this particular case being
5 discussed by Mr. Paulin, we have two unions agreeing
6 on work jurisdiction without in any way discussing
7 the matter with the employer or the employer's
8 counsel which is involved. The objection is this:
9 In the area, we have collective agreements entered
10 into traditionally by the Construction Association
11 in, say, the City of Hamilton, with the various unions
12 in the City of Hamilton. Now, those collective
13 agreements are negotiated, the rates of wages are
14 set and they are negotiated on the basis of work
15 jurisdiction as it is basically recognized in the
16 area.

17 Then, bids are made on jobs and the
18 bids are made by various sub-contractors who bid
19 on it having in mind that this is a labourer's work,
20 this is carpenters' work, this is lathers' work.
21 The prices are fixed, the contracts are let and then
22 they go on the job site and they now find that a new
23 problem has arisen and there is now a dispute between
24 the two unions and they have switched jurisdiction
25 or someone has given up some jurisdiction and now the
26 work is not going to be done by the lathers at \$3.20
27 an hour as has been done: It has now been assigned
28 to the carpenters at \$3.70 an hour and this throws
29 the whole bidding procedure out and the whole basis
30 on which the job was priced, it throws that out.

1 In other words, any of these things that were done,
2 very often the collective agreement says that the
3 employer recognizes the union as a bargaining agent
4 for employees doing carpentry work or lathers' work
5 and what is carpenters' work or lathers' work is
6 usually as set out in the union's constitution.

7 Now the unions are able to change
8 those constitutions unilaterally without any consulta-
9 tion with the employer and it is this removal from
10 the area of the collective agreement of work juris-
11 diction, this unilateral removal of it and really
12 bargaining between unions without in any way discussing
13 it with the employer who is a party to the agreement
14 and a real party to be consulted.

15 THE COMMISSIONER: What would be the
16 consideration leading the latter to consent to a loss
17 of work area?

18 MR. STRINGER: Mr. Commissioner, this
19 is something we don't always know. There are so
20 many political undertones which accompany any of
21 these moves, I agree with you, you would wonder why
22 a union is prepared to give up some of its traditional
23 work. There may be any number of reasons. There
24 may have been some new development in the United
25 States, some technological development which would
26 permit the carpenters to take a lot of work away
27 from the lathers, so the carpenters may say, "We won't
28 take a lot of that work from you because we don't
29 really want it up here in Ontario. However, the
30 price we expect is that you are giving up

1 this segment of work which we want to do". I think
2 there are many implications in that.

3 MR. POLLOCK: From what you said
4 earlier, it would seem to me that it would be
5 beneficial to the bidding system if you could,
6 beforehand, allocate the type of work that is going
7 to be done on the job and then in those areas where
8 you would have a change, a new technique, a technologi-
9 cal advancement that might present a problem for
10 negotiation.

11 MR. STRINGER: This comes back to,
12 I think, Mr. Paulin's point that when negotiating
13 a collective agreement, we feel we know what we are
14 talking about. We feel we know what work is
15 carpenters' and what work is labourers' based on, as
16 Mr. Paulin says, the historical application of this
17 work in the past. I am not talking about 50 years
18 ago: I am talking about two years ago or one year
19 ago. And based upon this sort of thing there is
20 the allocation of work and then a couple of unions
21 get together and unilaterally decide that they are
22 going to switch it around for any number of reasons.

23 THE COMMISSIONER: Provided in the
24 agreement that would be excluded. Each union agrees
25 to be bound by the existing practice.

26 MR. PAULIN: Mr. Commissioner, if I
27 may elaborate on this, this goes back a few years,
28 but to show you the lack of centralized control, there
29 was a ceiling to be suspended in a classroom. The
30 lathers were involved, the carpenters were involved

1 and the sheet metal men were involved. The lathers
2 were involved because of the span system that was
3 used to hang the ceiling; the carpenters were
4 involved because of the material that was there and
5 the sheet metal men were involved because it was
6 a screw threaded ^{into} / metal. The resolution was tried
7 to be resolved and worked ^{out} / at that time and word
8 came back from McSorley, who was president of the
9 Lathers Union that he did not claim jurisdiction on
10 this work. It looked like the answer was there,
11 it was a delay, again the job had been sent down
12 until this situation was resolved. Everybody was
13 off - plumbers, electricians and everybody walked
14 out of the building until this resolution was made.
15 It was a day and a half later. Even though Isaac
16 McSorley agreed that he did not, as an international
17 representative or president, claim jurisdiction over
18 this type of work, the local business agent refused
19 to take that man's decision. In the union make-up
20 apparently, the local still has the prerogative
21 of refusal, so there was no resolution.

22 THE COMMISSIONER: Then it confined
23 itself to an existing standard?

24 MR. PAULIN: The only way it can bind
25 itself to an existing standard is, as I say, the
26 Ontario case history which says, "This is so and so's
27 work". And we have a point of reference that we can
28 get quick resolution. The biggest problem we have
29 in the construction industry today is to proceed with
30 the work.

1 MR. POLLOCK: You don't have to have
2 a case history. What you would have to have is a
3 contract. The difficulty is not in your mind
4 knowing whose jurisdiction it is and it is not in the
5 union's mind knowing whose jurisdiction it is: It
6 is just that both your minds aren't the same and
7 that you say, "The practice is this".

8 MR. PAULIN: I sub-contract for
9 the lathing so I have no control over the conditions
10 that that man has signed with his union. This is
11 where the problem comes in.

12 MR. POLLOCK: I think when you
13 get all the contractors together and all the trade
14 unions together and they say, "All right, this is
15 the type of jurisdiction that exists with carpenters
16 with relation to suspended ceilings X," and part of
17 it is done by Y and the lathers will do this and
18 bricklayers will not do the windows and somebody
19 else -- and all this is ironed out over the areas
20 where people today know or suggest they know what
21 the practice is. There are some contentious areas
22 which will require negotiation and bargaining
23 between the unions. The lathers will say, "Okay,
24 you take suspended ceilings and give us something
25 else" and maybe they can arrive at that kind of
26 agreement but it is the problem or articulation
27 of the practice. If you put it in a contract then
28 there is no difficulty. The difficulty comes in when
29 you leave it open and you say, "Mr. Stringer has
30 got this jurisdiction and Mr. Paulin has got another

1 jurisdiction" and you don't spell out what the
2 jurisdictions are; you leave it to them to say,
3 "Fight it out between yourselves". That is what
4 causes the trouble.

5 MR. STRINGER: I think there is
6 some validity in what you are saying, Mr. Pollock.
7 However, with respect, when sitting across the
8 bargaining table and especially with building trade
9 unions as opposed to industrial unions, the question
10 of, to use your words, articulation is an extremely
11 difficult one. It is extremely difficult to get
12 a building trade union to articulate, to spell it
13 out, to define. It is the practice of the building
14 trade unions to attempt to keep things loose. Now
15 you may say, well why don't the employers insist
16 that they be tied down. Employers can only insist
17 on these things as a practical measure to a certain
18 limit and then they have to get their job going again
19 and end the strike which may run on for a couple
20 of months. However, it is my experience that the
21 building trade unions do not want to tie it down
22 and traditionally refuse to. Why? Because they
23 are now practicing on the basis that the terms of
24 the collective agreement are minimums and they are
25 going to operate within the framework of supply and
26 demand and if there is an abundance of work then,
27 because of the scarcity of tradesmen to which Mr.
28 Paulin will refer later in his brief, ~~they~~ have
29 more bargaining power and they use that bargaining
30 power to exact other concessions over and above what

1 was bargained for and provided in the collective
2 agreement. And it makes no difference to a great
3 extent what was in the collective agreement because
4 if you don't come to terms with them you find that
5 you end up one way or another with a walk out. I
6 will refer to that area of it later in my presentation
7 where I criticize the law of Ontario because it is
8 too loose and it does not provide enough deterrent
9 against illegal walkouts during the life of a collective
10 agreement.

11 THE COMMISSIONER: Do you ever have
12 a situation in which the allocation is made to a
13 lower wage group than a higher?

14 MR. STRINGER: Yes, sir, I think
15 you may have that.

16 THE COMMISSIONER: So you may benefit
17 that way as well as lose?

18 MR. STRINGER: I am sorry, the
19 allocation I thought you were referring to, Mr.
20 Commissioner, was ---

21 THE COMMISSIONER: I mean between the
22 two unions.

23 MR. STRINGER: Mr. Paulin would
24 have to answer that.

25 MR. PAULIN: Mr. Commissioner, I
26 think perhaps it would be in order to reflect the
27 historical preparation of a tender. Maybe this
28 will explain some of the questions you are directing.
29 Documents are prepared, specifications are prepared
30 for a legal contract to build a building. In the

1 collection of trades prices there is utter chaos in
2 a contractor's office receiving prices by telephone,
3 being confirmed by letter after the tender closes.
4 This is traditionally what happens. There is no
5 opportunity other than a quick reference to the
6 sources available to find out about an unknown
7 bidder. There certainly is no opportunity to
8 find out who his collective agreements are with
9 to predetermine some of the problems that arise
10 after the award of the contract.

11 When the contract is awarded we may
12 have a pre-job conference. This has been done to
13 try to find out amongst the unions if there is any
14 dissension as to jurisdiction. These are beneficial
15 but they do not resolve the complete situation
16 owing to the fact that we have certain conditions
17 in our agreement with our tradesmen which may
18 conflict with the agreement that Mr. Pollock has as
19 a sub-contractor under the general contract to his
20 tradesmen. So, therefore, the whole thing cannot
21 be resolved nicely and tidily for the contract is ---

22 THE COMMISSIONER: I was not going
23 into that. I was simply taking the simple case
24 where the lathers transferred it to the carpenters,
25 the carpenters received more money. Do you ever
26 have cases in which the transfer is in the reverse,
27 the higher paid men transfer it to the lower paying
28 group?

29 MR. PAULIN: I would say the wages
30 were not the prime reason but the jurisdiction of

1 the work.

2 THE COMMISSIONER: But it makes a
3 difference to the contractor whether he has to pay
4 \$3 an hour or \$2 an hour.

5 MR. PAULIN: The contractors base it
6 on firm prices with no reflection of escalation or
7 de-escalation.

8 MR. POLLOCK: If you based it on \$3
9 an hour and you only have to pay \$2 an hour, you make
10 a dollar an hour more profit.

11 MR. PAULIN: I can't answer that
12 question because wage is not the problem.

13 THE COMMISSIONER: Well, if wages
14 are not the problem, what is the difference, if they
15 are allocated to one or the other? I thought the
16 wage increase was the objectionable feature..

17 MR. STRINGER: That is only part
18 of it, Mr. Commissioner. Firstly, in the years I
19 have been acting for a number of contractors in
20 the city of Hamilton and have been involved in
21 jurisdictional disputes, I have never been involved
22 in one where the work was going from the higher paid
23 union to the lower paid union, to answer that question.
24 My experience in this area may be somewhat limited.

25 THE COMMISSIONER: I do not suggest
26 this as a probability or an actuality, but it would
27 be possible for a transfer to a higher rate and
28 then split the difference between the two unions.

29 MR. STRINGER: Mr. Commissioner, I
30 will try to explain to you why Mr. Paulin says that

1 at that stage the money is not really the most
2 important thing. Take a company that is a general
3 contractor - say it is Mr. Paulin - and he employs
4 carpenters. Part of the contract is sublet to a
5 sub-contractor who employs lathers. So, there is
6 a contract made between Mr. Paulin's company, the
7 general contractor and XYZ Company, the lathing
8 contractor -- a firm contract for the work. Then,
9 the lathing contractor goes on to do the lathing
10 work and the carpenters say, "Hold on, now, this
11 is carpenter's jurisdiction." The problem at that
12 stage is that if the carpenters are now allowed to
13 take this work, then it must be taken away from the
14 lathing contractor and given to somebody else. But
15 there is a binding contract there.

16 THE COMMISSIONER: But provision can
17 be made for possible alteration in the allocations.

18 MR. PAULIN: Mr. Commissioner, it
19 does not cost the general contractor anything. The
20 sub-contractor has to adjust according to the
21 resolution.

22 THE COMMISSIONER: Why should he
23 not be familiar with the terms of the main contract
24 dealing with his particular part of the work?

25 MR. PAULIN: It is not established
26 by case history. On each project there can be a
27 different interpretation. This is one of the dilemmas
28 of our business.

29 MR. POLLOCK: The problem is that you
30 live really in a kind of land of hope that you think

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the

1 is / jurisdiction and you hope they will not latch
2 onto some more jurisdiction and sometimes it's all
3 right -- it works out; but in some places the
4 prince never comes.

5 MR. STRINGER: I would suggest an
6 ideal situation in which every contractor and sub-
7 contractor making a bid for that job knows exactly
8 how the unions involved -- and there are some 20
9 building trade unions -- are going to react to the
10 work assignment and I don't think it can be spelled
11 out clearly enough. You may have spelled it out
12 clearly but they ^{may} be still unwilling to accept it.

13 MR. POLLOCK: That is a different point.

14 MR. STRINGER: At this stage we
15 must realize the contracts are let. The owner has
16 said, "All right, I now contract with Mr. Paulin's
17 company, the general contractor, for that building
18 to be built for a sum of \$500,407.12". That is
19 the contract price. Now, that is based upon the
20 bids that have come in from the sub-contractors.
21 If this is subsequently altered and a different
22 sub-contractor comes in because the lathing sub-
23 contractor has been told he cannot do it, then
24 the whole thing is up in the air again and then
25 the firm price either does not exist or the general
26 contractor or some other contractor has to bear a

MR. STRINGER: You are not concerned with money in the beginning, Mr. Commissioner, but you are concerned once you have let the work. Once contracts are made, then you have to be concerned.

THE COMMISSIONER: Certainly, I understand that because you don't know what is going to develop in the future.

MR. STRINGER: That is right.

THE COMMISSIONER: The only other question is, can't you foresee and provide for such a future?

MR. STRINGER: I would only say that up to this time the construction industry and the building trade unions have not been able to provide for such a future and I think part of what we are hoping to do is get into some discussion where we can at least attempt to highlight some of the problems and possibly resolve some of them.

MR. POLLOCK: I think the first step -- again it comes back to articulation -- is to sit down and somehow -- you may not be that far apart on many points -- but somehow for the carpentry contractors to say, "This is carpentry work, what I understand to be carpentry work", and the lathers will sit down and say the same thing and the unions the same thing, and at least arrive at some kind of common basis of agreement saying that when we generally talk about this work, that is what it is. So, when you are negotiating your contract and somebody says where it says carpenters jurisdiction

1 it means this and the carpenters may say, "All right,
2 in addition to that we want A, B, and C" -- three
3 other additional things. All right, you can include
4 those and you can have a modified section four or
5 whatever you want to call it. At least you have
6 got some things tied down and people can look at
7 some reference and say, "If I am going to do lathers'
8 work, I am a lathing contractor and obviously I
9 cannot put the windows in".

10 MR. STRINGER: Mr. Pollock, this
11 is by implication what has happened even though it
12 has not been articulated, but the problems that
13 arise are in the exceptions that develop during the
14 life of the collective agreement. These are
15 where the problems arise and no matter how well
16 you have articulated, you have not provided for some
17 new political situation which has arisen between
18 the unions or for some new technological development
19 or some modification, because we must remember that
20 producers of building materials are constantly
21 striving to modify these building materials in order
22 to reduce the amount of labour required to install
23 them into a building.

24 THE COMMISSIONER: But where it is
25 a new feature, it obviously has never been pronounced
26 on, but you can make provision for that by agreeing
27 to have that settled, as the statute contemplates.

28 MR. STRINGER: In my presentation,
29 sir, I hope to deal with that because there is a
30 basic problem in having each jurisdictional dispute

1 dealt with in a forum because of the reasons I have
2 set out in my brief.

3 MR. POLLOCK: Persons and employers.

4 MR. STRINGER: That is the key.

5 MR. POLLOCK: You will be very
6 surprised to know that you and the carpenters union
7 are in agreement on that.

8 MR. STRINGER: We are in agreement
9 there is a problem but I don't think we are in
10 agreement as to resolution of it and I quite frankly
11 admit, in the thinking I have been able to do on it,
12 I have not been able to come up with what I think
13 is an acceptable solution.

14 THE COMMISSIONER: That introduces
15 the feature of an outside union that has at the moment
16 no connection at all with the work but puts in a
17 claim, "We ought to be employed on that".

18 MR. STRINGER: This is where every
19 jurisdictional dispute arises.

20 THE COMMISSIONER: It can arise
21 between the conflict of the carpenters and the lathers
22 which you may have contracted for.

23 MR. STRINGER: Mr. Commissioner, there
24 is a contract with every building - every building
25 trade union has a contract with the Construction
26 Association in the City of Hamilton.

27 THE COMMISSIONER: Do you mean to
28 say there is no general contract made in which no
29 single union is omitted?

30 MR. STRINGER: That is correct, sir.

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1 What I am saying is ---

2 MR. POLLOCK: You are talking about
3 the geographical area now?

4 MR. STRINGER: I am saying every
5 building trade union in the City of Hamilton has
6 a collective agreement with either the Hamilton
7 Construction Association or the Mechanical Contractors
8 Association. Every union has a collective agreement
9 in that city so, you will/a job and you will have
10 a jurisdictional dispute arise because the work has
11 been given to the lathers on this part of the wall
12 and not the carpenters. Carpenters are working on
13 the job site but they are doing other work.

14 THE COMMISSIONER: Can you have no
15 job at all in which, say, carpenters are not employed?

16 MR. STRINGER: I would not think so.

17 THE COMMISSIONER: Or any other
18 union not employed? But it sees certain work being
19 carried on which it claims so it presents itself
20 and says, "We want that new contract ourselves".

21 MR. STRINGER: Mr. Commissioner,
22 I would say I think this is a possibility but this
23 has not been the historical area in which juris-
24 dictional disputes have developed because one of
25 the great problems that have developed with
26 jurisdictional disputes is this: It is usual, in
27 fact, in my experience it has invariably been with
28 unions, both of whom are on the job site, and the
29 problem is if you leave the lathers doing the work
30 the carpenters walk off and if you give it to the

1 carpenters, the lathers walk off.

2 THE COMMISSIONER: What was the
3 holding of Chief Justice McRuer on that?

4 MR. STRINGER: The holding of Chief
5 Justice McRuer was that the matter could not come
6 before the Jurisdictional Disputes Commission, which
7 is now the Labour Board - it could not come before
8 it unless people who were in the lathers union, and
9 people in the carpenters union were both employed
10 by the same employer.

11 THE COMMISSIONER: Your suggestion
12 is they may be on the job but employed by different
13 contractors?

14 MR. STRINGER: They usually are.
15 This is usually the situation because there may
16 be 20 sub-contractors or more on the job, and that
17 is where the problem arises.

18 THE COMMISSIONER: I see.

19 MR. PAULIN: That is right.

20 (Mr. Paulin continues reading the brief from page
21 4 down to, "...being suffered by the employer." page 5.)
22

23 MR. POLLOCK: Is the opening part
24 of that last paragraph just euphemistically saying
25 that there are some people in the construction trades
26 who are lazy and not good workers?

27 MR. PAULIN: I am not afraid to say
28 that. As a matter of fact we pay a reporting time
29 for some of these people and they may turn up with
30 Ted Stringer that afternoon. We have to screen our

1 employees. It is a fact of life. I don't say the
2 business agent can be responsible for their actions
3 but we still have the right of employment and if
4 they do not meet the requirements of my supervision,
5 then they must be sent back.

6 MR. POLLOCK: The question is only
7 that I did not understand what the "unreliable
8 social practices" was.

9 MR. PAULIN: Some of them are subject
10 to drinking habits and that sort of thing.

11 MR. POLLOCK: Fine, I just wondered
12 what it was.

13 (Mr. Paulin reads from "Point of Reference - No. 6"
14 down to "...do not seem to be available." on page 7.)
15

16 MR. POLLOCK: A lot of these things
17 are all the product -- I don't quarrel with the
18 necessity for it -- but the abdication of the
19 employment relationship to the craft unions by the
20 employers. As I understood, historically, because
21 the construction season was even shorter in the
22 olden days, and that it is impossible to move a whole
23 labour force throughout the province in trucks. So
24 that, a lot of these abuses, or apparent abuses, are
25 really the result of saying to the trade union or
26 the craft organization, "You are the labour broker.
27 We want employees, and you send them up to us and
28 that is the way it goes. We negotiate with you
29 for their terms and conditions".

30 MR. STRINGER: Mr. Pollock, you used

1 the term, "abdication of the employment relationship".
2 That implies there was once an employment relationship
3 in the building trades industry. Historically, of
4 course, I do not think there has been. A craft
5 employee is a journeyman. In other words, historically,
6 he is a man who took his craft and went from job
7 to job, from town to town, almost as an individual
8 sub-contractor, as an individual contractor. So,
9 in the construction industry, and even with journeymen,
10 craftsmen, historically there has not been an
11 employment relationship. I would say there is today,
12 probably a greater degree of employee- employer
13 relationship in the industry than there ever has
14 been, although I must agree with you, it is at a
15 very low ebb because of the fact that building
16 conditions permit building to carry on for a longer
17 period of time, because of the fact that we have
18 been in a period of extended economic expansion, there
19 has been a lot of construction work and I would say
20 there has probably been somewhat more steady employment
21 than there has been. But the problem in the building
22 trades industry is this, even no matter how busy
23 they are: Take a mechanical contractor, now he is
24 doing the plumbing work on a large building. Well,
25 that building may take two years to construct but
26 he may finish the plumbing work three months before
27 the building is finished, or most of the plumbing
28 work, so the plumbing contractor is finished, his men
29 go unless he has another job to take them onto. I
30 don't think really the construction industry can

1 criticize it for not maintaining a full work force
2 all year round. It would be economically unfeasible.
3 I think the whole construction industry is not given
4 to the normal type of employee-employer relationship.

5 MR. POLLOCK: I hope that I prefaced
6 my remarks by a comment that I was not criticizing
7 the construction industry on that basis. I was
8 just saying that if you are going to want the
9 advantages of the so-called stability in the industrial
10 areas, then you have to provide the same type of
11 relationship, employer-employee relationship, the
12 same loyalty to the plant, the same interest in
13 continuity of employment.

14 MR. STRINGER: I don't think you have
15 to to the same extent and I will tell you why. We
16 have government today which is supposedly taking
17 quite an active part in apprenticeship programs.
18 What Mr. Paulin has said to you is that in this
19 area, while ostensibly the government on paper has
20 a very attractive looking apprenticeship plan, it
21 has not, in fact, existed, as a practical matter.
22 There have not been any apprentices attracted to the
23 craft unions.

24 THE COMMISSIONER: What, in general,
25 are the provisions of its scheme?

26 MR. STRINGER: Generally, the
27 provisions, Mr. Commissioner, as I understand them
28 are that they leave it primarily up to the employer
29 or up to the industry to say, "We have drafted up
30 an apprenticeship scheme, we have come to an agreement

1 with the union on it. Here is what we would like
2 to do". And usually, they go along with it.

3 THE COMMISSIONER: But these
4 apprentices have got to be taken in charge by the
5 craft members.

6 MR. PAULIN: May I expand on that,
7 Mr. Commissioner?

8 THE COMMISSIONER: Yes.

9 MR. PAULIN: Years ago, Mr. J.M.
10 Piggot, a fine construction man, went to the government
11 agency and found that there was a great need to bring
12 new craftsmen to a trade. Through the government
13 agency, the apprenticeship board was set up and they
14 have geographical locations throughout the province
15 whereby young men who have the qualifications, I
16 believe it is grade 10 education minimum, they come
17 and ask to be indentured in a craft trade to an
18 employer. They used to spend a certain amount of
19 years; now they spend so many hours and during
20 their training at job site and visitation to the
21 Ontario Trade School, they are supposed to be
22 graduated as qualified tradesmen and accepted into
23 their craft unions. The difficulty, however, has
24 been that the ratio which has been set up in
25 contractual relations has not been sufficient to
26 bring in young men in sufficient numbers to buoy
27 the competitive spirit within the craft. I will
28 name this as a case in point: At an association
29 meeting which is mentioned here, we were given forms
30 by the government on their visitation to ask for

1 craftsmen to be indentured to our separate firms.

2 I believe there was a request for some 35 youngsters
3 who would be taken throughout the province. I
4 don't know, I could be faulty on this point, but I
5 don't know of any one of us who ever received one.

6 Now, where do we find them? Normally,
7 they come from our school systems. The numbers that
8 are available to us are almost nonexistent. Perhaps
9 later on here we may expand. I think we may be
10 finding a resolution of this by making an increase
11 in technological and technician training for our
12 young people which will allow them to be exposed to
13 the construction industry and will upgrade our
14 industry. We are all concerned about it, there is
15 no question about that.

16 THE COMMISSIONER: You have the
17 word "craft" and then you have the expression "craft
18 union". What is the distinction or the definition
19 of each one?

20 MR. PAULIN: I think that is a
21 nebulous question too. I find fault with the
22 fragmentation that has taken place since the war.
23 Some of these original craft unions used to do many
24 things, but there has been a claim as a craft within
25 the A.F.L. movement for all kinds of division which,
26 of course, again creates more jurisdictional difficulties.
27 We are 54 years old, my company, and I recall in its
28 origin there were 5 or 6 craft unions. Today, Mr.
29 Stringer says there are 20. Technological changes
30 have brought this about, sir, but some of these crafts

1 are not expansive enough in their jurisdiction to
2 keep their men going all the time.

3 THE COMMISSIONER: I was more or less
4 concerned about the nature of a craft as distinguished
5 from a craft union. Take a couple of hundred years
6 ago, you didn't use the word "union" but you had
7 crafts.

8 MR. PAULIN: This is true, sir.

9 THE COMMISSIONER: Which were
10 organizations of people who had the same skills,
11 who offered the same work. Well, does a craft today
12 exist without having the attributes of a union?

13 MR. PAULIN: Yes, sir, it does.

14 THE COMMISSIONER: That is what I
15 would like to explore.

16 MR. PAULIN: But in a collective
17 agreement if we request anyone for a craft they
18 are indentured to become union members under an
19 understanding under our collective agreements, many
20 of them.

21 THE COMMISSIONER: Well, who
22 determines, now, the member who will be admitted
23 to a craft - the craft itself?

24 MR. PAULIN: The collective agreement
25 between the employer group and that union creates
26 the ratio.

27 THE COMMISSIONER: You federate,
28 almost in relation to apprentices?

29 MR. PAULIN: To the ratio, that is
30 right. In other words, in the carpenter trade it is

1 one in eight; in the plumbers' trade it may be
2 something different but this is agreed upon by the
3 number of people who are in the craft. //

4 THE COMMISSIONER: Is that relation
5 more or less preserved? Is it honestly kept or
6 is there any tendency to reduce that?

7 MR. STRINGER: May I speak to that,
8 Mr. Commissioner?

9 THE COMMISSIONER: Yes.

10 MR. STRINGER: One of the problems,
11 and I think Mr. Pollock alludes to it when he speaks
12 of the ratio being in a deficit position, is that
13 it sounds to the average listener that you can only
14 have one apprentice to every eight tradesmen and
15 this is not very good. The truth of the matter
16 is that the construction industry is not able to
17 obtain one apprentice for every 8 carpenters. This
18 is the problem. The apprentices are not coming
19 into the field.

20 THE COMMISSIONER: Why not?

21 MR. STRINGER: I don't think that
22 the blame lies with the contractors entirely. I
23 don't know whether it lies with them at all.
24 However, there are other parties involved. There
25 is the government and the government's apprenticeship
26 program is not certainly helping to bring new people
27 into the industry.

28 THE COMMISSIONER: It doesn't contain
29 anything obligatory?

30 MR. STRINGER: No, sir, and I think

1 also there is an obligation on the unions. As
2 long as we are engaged in this relationship whereby
3 the union is a monopoly as it is today in each
4 craft and is the sole source of supply of labour
5 for particular work on a construction site, surely
6 there is some obligation on that union to see that
7 there are enough people in its unions to meet the
8 needs of the industry and unions are failing in this.

9 THE COMMISSIONER: Quite. There is
10 no doubt it may tend to keep the membership down to
11 the lowest number.

12 MR. STRINGER: It does.

13 THE COMMISSIONER: Consistent with
14 carrying on the available work. //

15 MR. STRINGER: Well, one of our
16 complaints is that they are keeping the number down
17 below that number---the optimum, minimum number,
18 consistent with carrying on the work. This is part
19 of the problem, I think.

20 MR. POLLOCK: Do people want to
21 become carpenters these days?

22 MR. STRINGER: I would think that
23 people want to become carpenters. I think if we
24 are going to be honest about it, you take a carpenter
25 who is earning, say, \$3.70 an hour. Someone coming
26 into carpenter work as an apprentice, say an 18 year
27 old boy, coming into carpenter work, is going to work
28 for the first year, I believe, or maybe the first
29 six months (I am not positive) at about 40 per cent
30 of that rate which brings him in at a rate substantially

1 under \$2 an hour. These are the anxious young people
2 in our society. These are the people who want good
3 clothes and to drive cars at a young age and they
4 say to themselves, "Why should we go and work for
5 something under \$2 an hour to learn a trade when
6 we could go into the XYZ Steel Company and make
7 \$2.50 or \$2.70 an hour?". I think this, partly, is
8 discouraging people from coming into this scheme.

9 THE COMMISSIONER: There is a limit
10 to the number of people who can go into that steel
11 trade. If there is a sufficient demand for
12 employment, they can't choose wholly as they please.

13 MR. STRINGER: Well, sir, over the
14 past 7 years there has been such a tremendous expansion
15 in industry generally, certainly in Ontario, that
16 up until right about now there has been a great
17 availability of good jobs for these young people
18 and we are dealing with a phenomenon which has
19 really arisen within the last 8 years and has been
20 going on constantly through that period where the
21 young people in Ontario today, the young men who
22 are leaving school, are able to get jobs paying them
23 good money, well in excess of \$100 a week, within
24 a very short period of time and knowing the
25 impatience of young people they don't say, "Well, I
26 should apprentice myself as a carpenter today because
27 I am going to be able to make between \$8000 and
28 \$12,000 a year four or five years from now". This
29 is not the thinking process that goes on.

30 MR. POLLOCK: They are smarter than

1 articled students.

2 MR. STRINGER: Yes, they are.

3 THE COMMISSIONER: Well, I suppose
4 there are carpenters who are outside of the union.

5 MR. PAULIN: Oh, yes, sir.

6 THE COMMISSIONER: And outside of
7 any craft relation.

8 MR. PAULIN: They are in a craft
9 but they are not unionized.

10 THE COMMISSIONER: What do you mean
11 by that now?

12 MR. PAULIN: All right, you can go
13 and take the training and indenture yourself --

14 THE COMMISSIONER: But supposing I
15 don't do that. I learn my trade by working as
16 a labourer first and then I know how to handle that
17 and I have a natural ability to handle a hammer and
18 saw and I ultimately become a carpenter but I have
19 no certification of that. The apprentice does get
20 a certification?

21 MR. PAULIN: He certainly does from
22 the Ontario Trade School.

23 THE COMMISSIONER: Then I suppose
24 there is no standard except what you observe the man
25 can do.

26 MR. PAULIN: I think one of the
27 difficulties, and it may be resolved in a geographical
28 area by association and cooperation with the local,
29 has been that I indenture an apprentice to me when
30 I have 50 on my payroll and then in two months I may

1 not be able to seek work and yet I have that man on
2 my payroll. Does he become a common labourer?
3 Does he become a sweeper? Now we are trying to
4 say if there are 400 in a local we should have the
5 ratio of those people available, maybe we will
6 never reach it, to spread amongst all of us because
7 that local is supplying all of us. This formula
8 may increase our apprenticeship training aspect
9 but at the present time there are problems, sir.

10 MR. POLLOCK: The only advantage
11 that the individual would have in engaging in
12 an indentured operation like that is the security --
13 at least he is employed all year around and knows
14 he is going to have a job and he is not so much
15 attracted by availability of employment at XYZ Steel
16 Company, which does offer him year round employment.

17 MR. PAULIN: He, in fact is
18 articling to construction the same as you did to law.

19 THE COMMISSIONER: He has the benefit
20 of the advice of one who is interested in his work.

21 MR. PAULIN: He has the benefit of
22 the craftsmen at the job site - the older gentlemen,
23 this is right, and he has the benefit of a good
24 training school, but the ratio is what has been
25 the difficulty.

26 THE COMMISSIONER: I mean to contrast
27 that with the way a labourer might pick it up himself.
28 He has to rely more or less on his own judgment.

29 MR. STRINGER: But you asked the
30 difference between a craft and a craft union: I think

1 a craft is made up of the people who are able to
2 perform a specific type of work which historically
3 has been construction work of a nature.

4 THE COMMISSIONER: But they did have
5 some sort of inter-relation.

6 MR. STRINGER: 200 years ago they
7 had guilds and everyone who was a shoemaker was in
8 the shoemakers' guild and all the carpenters were
9 in the carpenters' guild.

10 THE COMMISSIONER: At that time did
11 they not have some means of certification?

12 MR. STRINGER: They had then the
13 real system of indentureship. They had an agreement
14 they would rip up and as long as the young apprentice
15 held this part and the craftsmen held this part, he
16 lived with him, he ate with him and worked with him
17 and spent four years with him and on completion of
18 that, he received his indenture as a journeyman.

19 THE COMMISSIONER: That made him a
20 member of the craft.

21 MR. STRINGER: That made him a member
22 of the guild - the craft or the guild.

23 MR. POLLOCK: I thought the guild was
24 the organization of masters.

25 MR. STRINGER: The masters were the
26 craftsmen.

27 MR. POLLOCK: That is right, they were
28 the employers.

29 MR. STRINGER: I don't read it that
30 way. As I read it the guild were the people who

1 performed the craft. I will not take strong exception
2 with you on this.

3 THE COMMISSIONER: Take a silversmith
4 guild. They were all men who had been trained in
5 the art of fashioning silver.

6 MR. STRINGER: That is right. But
7 today you might have two carpenters, one of whom is
8 a member of the carpenters' union and one of whom is
9 not. Now, they are both members of the same craft.
10 They both have the same craft skill.

11 THE COMMISSIONER: And they might
12 conceivably have gone through the same course of
13 apprenticeship under an indenture.

14 MR. STRINGER: Yes, this is quite
15 true, but the non-union craftsman cannot work on
16 a union job. He must become a member of the union.

17 THE COMMISSIONER: Well, the union
18 won't work with him. That is the way it is.

19 (Mr. Paul continues reading brief from "Point of
20 Reference - No. 7" on page 6 to "...by the Workmen's
21 Compensation Board." on page 7.)

22 THE COMMISSIONER: Is that a frequent
23 occurrence -- the sending of a person to another
24 contractor when that man is not qualified?

25 MR. PAULIN: Very much so.

26 MR. POLLOCK: In some cases, though,
27 isn't the area of craft jurisdiction so broad that
28 there may be some elements you want a carpenter to
29 do? I may want a carpenter who is doing rough work.
30

1 MR. PAULIN: That is usually specified
2 with the business agent, sir. It is qualified
3 between the two parties as they ask for a man to be
4 sent to the job site.

5 MR. POLLOCK: But they will send
6 somebody -- if I find a man is unsatisfactory in
7 the area of skill I want him to do and I say he is
8 unsatisfactory and cannot use him, he is sent back
9 to the clearing house and you will call up and say,
10 "I need a carpenter" and they will send him out and
11 perhaps he can perform the function that you want
12 him to do. Is that the type of thing you are saying?
13 Are we talking about the fellow who is absolutely
14 no good at anything?

15 MR. PAULIN: Those are pretty harsh
16 words. What we are trying to say in this is, let us
17 upgrade the qualification of that journeyman,
18 "journeyman" meaning a qualified mechanic in a craft.

19 MR. POLLOCK: How do you do that?

20 MR. PAULIN: By selectivity within
21 our own ranks.

22 MR. POLLOCK: That is what you are
23 complaining about the trade union doing in the other
24 place. You say they are monopolizing these people
25 and not extending the membership.

26 MR. PAULIN: I am saying because
27 of the monopoly, we don't have the latitude.

28 THE COMMISSIONER: Doesn't that
29 involve in the final certification of apprenticeship --

30 MR. PAULIN: An apprentice is very,

1 very seldom -- let us go back to some of the ills
2 we have inherited. During the service all of the
3 young men physically fit, most of them, went to war.
4 Many men came into the unions, craft unions, because
5 of the economic necessity of producing for the war
6 effort, a lot of people who let us say they were,
7 barn-raisers, or whatever they were, came into the
8 crafts and some of this is inherent for that reason.
9 I would say almost unequivocally that a graduate
10 of the apprentice training is no problem. He is
11 a good craftsman, he is a good union man. It is the
12 person who somehow or other has managed to get into
13 the craft unions who really is not a qualified
14 craftsman and who, by screening of his own at job site,
15 does not meet the job requirements and therefore, has
16 been laid off on too many occasions by the employer.
17 This is the problem I am discussing.

18 THE COMMISSIONER: Do they keep
19 classifications of that sort of thing? Do they
20 say A,B, and C belong to Class A?

21 MR. PAULIN: All men are created
22 equal and they all get paid the same.

23 THE COMMISSIONER: Their training is
24 not equal. I am not concerned with the men themselves.

25 MR. STRINGER: The union is not
26 concerned with their training and competency either,
27 sir, and I think again this is one of our complaints.
28 I agree with you their training is not equal and
29 because their training is not equal, some people hold
30 the card as a union member in a craft and they are

1 not able to perform today's construction needs for
2 that craft, yet they have the card and the union
3 will send them out indiscriminately in many cases
4 to contractors.

5 THE COMMISSIONER: Do you indicate
6 the character of work you have in mind?

7 MR. PAULIN: Normally that is
8 qualified with the business agent when the superin-
9 tendent at job site calls up for craftsmen.

10 THE COMMISSIONER: There is quite
11 a difference between a carpenter who can put up a
12 piece of scaffolding and a cabinet maker.

13 MR. PAULIN: This is true.

14 THE COMMISSIONER: Certainly it
15 ought to be made clear as to the purpose for which
16 you want a man.

17 MR. PAULIN: Most of those cabinet
18 makers are kept on permanent payroll by the employers.

19 MR. POLLOCK: That is not so much
20 the difficulty as it is the wide range of skills
21 between the person who is a good finishing carpenter
22 and a bad finishing carpenter.

23 MR. PAULIN: I think productivity,
24 attitude -- these men work beside each other and
25 there is a necessity to be fair to the men
26 who are really producing and, therefore, on a
27 selective basis this man is returned far too often.
28 There must be some reason here that he is being
29 returned and what we ask is, if it happens too often,
30 within the union movement they should say, "You really

1 are not qualified; don't renew your membership next
2 year", that is Utopia. But that is what we are
3 saying in effect.

4 THE COMMISSIONER: Financially it
5 does not amount to a great deal, does it?

6 MR. PAULIN: Two things: There is
7 an annoyance factor because the man is asked to come
8 to the job site at the starting hour in the morning.
9 He gets two hour's reporting time. Fifteen minutes
10 after he gets there he is not acceptable. So, there
11 is a financial loss there. There is also a financial
12 loss in trying to get a replacement for him because
13 he may not come until the next morning.

14 THE COMMISSIONER: Oh, there is a
15 financial loss, but I was wondering whether it was
16 a major matter.

17 MR. POLLOCK: You ought to have a
18 farm system where you could send them back from the
19 majors for more training with the minors.

20 MR. STRINGER: This is not so outlandish.
21 I think it is very sound.

22 MR. PAULIN: I think it ~~is~~ a good idea.

23 MR. STRINGER: The Commissioner said
24 isn't this problem related to the certification of
25 apprenticeship and I think to some extent it ~~is~~. In
26 the building trades field, just as in every other
27 field today, there has to be a continuing education
28 because developments are coming so fast, and people
29 in the building trades field who have not made
30 themselves knowledgeable and skilled in the new

1 developments should go back to the farm and learn
2 these skills. There may be something very sound
3 in that, Mr. Pollock.

4
5 (Mr. Paulin continued reading brief from "Point of
6 Reference No. 8" page 7 down to, "....(Use of Work
7 Permit)".page 7.)

8 MR. POLLOCK: That is the converse
9 of 7?

10 MR. PAULIN: Yes.

11
12 (Mr. Paulin continued reading brief from "In the
13 mechanical ..." on page 7 down to "... to the voting
14 principle." on page 7.)

15 MR. POLLOCK: In that particular
16 example you give of the six-year work permit, were
17 there other people coming in after him into this
18 geographical area who would be admitted to the union
19 as full members?

20 MR. PAULIN: I think Mr. Reid can
21 answer this.

22 MR. REID: I am not sure of the
23 answer to that. I would think people have been
24 admitted in that period.

25 MR. POLLOCK: But you don't know?

26 MR. REID: No, I don't know.

27 MR. POLLOCK: Because the work permit
28 system is defended on the basis that "We have to
29 protect the members of our craft, of our guild, of
30 our trade, and if we expand it, everybody is equal,

1 then when it comes down to cut-back in construction,
2 then the smaller pie/^{is} being spread too thinly."

3 MR. STRINGER: I do not think that
4 is valid because I think in that situation, to some
5 extent the principle/^{of} seniority within the local
6 would apply.

7 MR. PAULIN: In the craft trade a
8 man can be assigned from a different geographical
9 area and he starts on a work permit, but if he
10 decides to locate in that area, after a reasonable
11 time, he should be able to become a member of that
12 local in good standing. This is the part that does
13 not seem to be forthcoming in several of these trades.
14 What is the reason for it?

15 THE COMMISSIONER: They do not claim
16 they can exclude them, do they?

17 MR. PAULIN: I don't know, sir. It
18 is something we know that happens, and it is something
19 that is internal again.

20 THE COMMISSIONER: Oh, yes, we have
21 had evidence before this Commission to that effect,
22 that they could not become members.

23 MR. STRINGER: It prevents a man who
24 is traditionally a member of a journeyman craft from
25 becoming a journeyman. He is no longer a journeyman.
26 He is held to one geographical area or he is prevented
27 from entering other geographical areas.

28 THE COMMISSIONER: Oh, yes, there is
29 that tendency, within any geographic area to confine
30 the work to a group that is established. You can

1 understand the reason for it because they want to
2 keep working steadily.

3 MR. STRINGER: We say this is one
4 of the evils that is resulting from this monopolistic
5 system.

6 MR. POLLOCK: I suppose it is the
7 same reason that some construction associations
8 sign contracts with trade unions, which may not be
9 as beneficial to outside contracting people coming
10 into the jurisdiction. I have seen some general
11 contracts signed in some locations in this province
12 -- not Hamilton; I have not seen Hamilton -- where
13 it provides for a differential for members who
14 are not members of the construction association.

15 MR. STRINGER: I have never seen that.
16 As a matter of fact, the concern I am familiar with,
17 the Hamilton Construction Association, is that no
18 contracts are entered into with non-members which
19 do not meet the Hamilton standards, but certainly
20 no penalty -- we have never attempted in Hamilton
21 to impose a greater rate of pay on a union coming
22 in from outside.

23 MR. POLLOCK: Well, the other run-
24 around is this, that the agreement says that the
25 unions will not sign a contract with anybody who
26 is not a member of the Association and that you
27 can't become an Association member until you have
28 been recognized by the union and so they send you
29 back and forth. That has been put to us. I don't
30 know whether that is prevalent but it does exist.

1 unions to be compelled to admit them to their ranks
2 if they choose to pursue it.

3 MR. PAULIN: I guess "compelled" is
4 the right word, yes. If they have the qualifications
5 they should be allowed in the union and create a
6 competitive spirit within the union.

7 THE COMMISSIONER: It would be a
8 senseless thing to educate them and then have them
9 unable to act.

10 MR. PAULIN: That is right.

11 MR. STRINGER: And as a practical
12 measure they can't fully act within the capacity of
13 their training under today's system unless they are
14 union members.

15 (Mr. Paulin continues reading brief from "Point of
16 Reference - No. 10" down to "...respectfully
17 submitted." on page 9.)

18 MR. POLLOCK: Thank you, Mr. Paulin.
19 Perhaps we will take a short break at this stage.

20
21 ---Short recess.

22 MR. POLLOCK: Mr. Stringer?

23 MR. STRINGER; Mr. Commissioner, and
24 Mr. Pollock, the first topic which I would like to
25 discuss with the Commission is the question of
26 injunctions and their use in Ontario.

27
28 (Mr. Stringer reads brief PART II, down to "...law
29 for picketing." on page 11.)
30

1 MR. STRINGER: In order to, by force
2 or coercion, compel the employer to recognize that
3 trade union.

4
5 (Mr. Stringer continues reading brief down to
6 "application to the Board." on page 11.)

7 MR. STRINGER: Now, I know there are
8 some problems with that. However, the union's first
9 impulse in every one of these jurisdictional dispute
10 situations is to walk off the job and set up a picket
11 line.

12
13 (Mr. Stringer continues reading brief down to "...final
14 and binding arbitration." on page 11.)

15 MR. POLLOCK: Of course, the only
16 problem with that is that those areas which are
17 relegated under the general management rights clause,
18 or which include the technological change which
19 has received considerable comment to date, are not
20 covered by a grievance procedure. There is no set-up
21 to deal with that. They say, "The only remedy
22 to us is the strike".

23 MR. STRINGER: I will deal with that,
24 Mr. Pollock. First of all, this again is part of
25 the smoke screen of the union's campaign. To date
26 the use of technological change has been one of the
27 most abused reasons for unlawful or anti-social
28 activity. While technological change may be
29 responsible for some problems because nothing is
30 static, I believe that the unions are taking and

1 throwing this reason all out of proportion as a
2 means of justifying unlawful activity. They are
3 using technological change and cooked-up stories
4 about unsafe working conditions as two reasons to
5 justify unlawful and lawful activity.

6 Now you mentioned, sir, the question
7 of management rights, that where a matter is a
8 question of management rights, the unions do not
9 have recourse to the grievance and arbitration
10 procedures. Agreed, but the unions are not asleep,
11 the unions know the implications of the management
12 rights clause when they negotiate into a collective
13 agreement and it is negotiated, and therefore, the
14 unions must accept the obligation of living with
15 that agreement. No employer is completely happy
16 with all of the benefits he negotiates into a
17 collective agreement but, having negotiated, then
18 he must live by them and if he doesn't, he must pay
19 the consequence. The same with the union.

20 MR. POLLOCK: Well, in some cases, he
21 doesn't live by them, he changes them. He will
22 negotiate for a group of employees doing - again we
23 are talking in the industrial situation - janitorial
24 work or maintenance work, and then if he can find
25 that it is more convenient to him to contract the
26 work out, he will contract it out and then you have
27 got, granted, a very nice relationship as far as
28 employees working for the employer are concerned,
29 doing this type of work, but you no longer have that
30 work being done there by the employer and his employees;

1 you have some sub-contractor doing it.

2 MR. STRINGER: That is a very simple
3 matter. I will deal with that gladly, Mr. Pollock.
4 First of all, every collective agreement which is
5 entered into today, if it is a properly negotiated
6 and properly drafted collective agreement, is no longer
7 a loose document between a business agent and some
8 company manager: It is a properly negotiated,
9 sophisticated agreement, negotiated by relative
10 experts on both sides, both parties having in mind
11 the body of arbitration decisions which have preceded
12 the negotiations. They know that the arbitration
13 decisions in relation to this problem you have raised
14 say that the fact that an employer negotiates a rate
15 for a janitor and it appears in the wage schedule,
16 doesn't mean the employer guarantees to employ
17 janitorial work. They also know that if the management
18 rights clause is silent, that up until now if there is
19 no restriction on the right to sub-contract that
20 the employer may sub-contract, or if the right is
21 expressly written in, he may sub-contract. Now, this
22 is the background, this contract is not entered into
23 in a vacuum. This is the background against which
24 that collective agreement is negotiated. The unions
25 know it. They know that in order to restrict the
26 company's right in order to sub-contract that janitorial
27 work, they have got to do it, they have got to
28 negotiate it and if they don't have the strength
29 to negotiate it at the time of collective bargaining
30 or if they are prepared to give that up in order to

1 get a nickel or a dime an hour more by way of wages
2 and the management is prepared to pay it, then they
3 have got to live with that deal.

4 I have been engaged in negotiations
5 in which my advice to my client has been, "This
6 management rights clause is important. You must
7 have it. If it is necessary to give the union a
8 stronger union security clause, give it to them. If
9 it is necessary to give the union this which seems
10 to be important for them, give it to them. But you
11 must have a proper management rights clause". So
12 this management rights clause appears in that
13 collective agreement as a result of collective
14 bargaining with all its implications, with all the
15 arbitration decisions which precede it and it must
16 be accepted. That is what bargaining in good faith
17 is and that is what living under the collective
18 agreement means.

19 (Mr. Stringer continues reading brief from page 11
20 down to "...from two to five days." page 11.)

21
22 MR. STRINGER: Now, I have been
23 engaged in situations as counsel for employers where
24 unions have picketed in support of one of these
25 activities. I have spoken to the union business
26 agent on the telephone and I have said, "Now, look,
27 you know that I can get an injunction. You know that
28 this is improper picketing". He says, "Oh, yes, I know
29 it but I know it is going to take you two or three
30 or four days to get it and we will have accomplished

our objective". In other words, the objective is an objective of harassment. If, on a particular job site, the union wishes to cause trouble for a sub-contractor for any number of reasons, the union will picket the job site, cause an unlawful strike and thereby, make that sub-contractor persona non grata and if this happens often enough, then general contractors just won't allocate contracts to him because they don't want the job held up.

THE COMMISSIONER: What is the harassment directed towards accomplishing? You may harass a person, but to what end?

MR. STRINGER: Well, let us assume that it is a contractor whom the union has not been able to organize so they put a picket line out on the job site because there is a non-union sub-contractor doing work in there. He is engaging in business in our society, the union has a right to organize his employees. If they can't organize his employees then they have no right to organizational picketing. Our courts have held that.

THE COMMISSIONER: In that case it is coercive upon him to accept a union.

MR. STRINGER: That is right, sir, absolutely.

MR. POLLOCK: Also, I suppose in the area where there is an agreement it is part of the process of softening him up a little bit.

MR. PAULIN: I mentioned a case in my presentation regarding cement masons. We had none

1 to our knowledge on our payroll for the work that we
2 were doing with labourers. However, we hired a
3 recognized cement finisher, who employed cement masons
4 and the harassment that was given to us was walking
5 off for meetings when the floor was sizing up,
6 and it could have caused serious complications and
7 also to create a picket line to prevent our labourers
8 from doing the traditional work they had done in
9 dry-packing and chipping for years. That is why I
10 had the meeting with the international officers to
11 resolve this harassment and that is when I found
12 out that they agreed amongst themselves in the green
13 book without any reference to the people whom I had
14 employed for years and I didn't think it was fair.

15 (Mr. Stringer continues reading brief from page 11
16 down to "...is likely to occur'." , on page 12.)
17

18 MR. STRINGER: That quote, of course,
19 is taken from section 17 of the Judicature Act.

20 MR. POLLOCK: Why does it help you
21 to be ex parte? I grant you, you maybe want to do
22 it quicker than the two-day's notice requirement.

23 MR. STRINGER: That is it, speed.

24 MR. POLLOCK: Well, it doesn't have
25 to be ex parte, it can be short notice. Ex parte
26 means no notice.

27 MR. STRINGER: Let me ask you a question,
28 Mr. Pollock. Why should a party engaging in this
29 unlawful activity be entitled to notice?

30 MR. POLLOCK: Because you beg the

1 question when you say, "engaging in this unlawful
2 activity", because it may be open to argument that
3 this activity is not unlawful.

4 MR. STRINGER: Then it can be resolved
5 within four days.

6 MR. POLLOCK: You are wanting the
7 advantage that you don't want to give them. They
8 say, "Well, we will let it be resolved in three or
9 four days".

10 MR. STRINGER: I don't think they
11 are prepared to accept short notice. In fact, part
12 of their case is that they say, "We can't prepare
13 a case in four days".

14 MR. POLLOCK: If you give them short
15 notice and take the evidence viva voce --

16 MR. STRINGER: Hold on, now. You
17 said take the evidence viva voce. That introduces
18 an entirely new concept. Let us assume we are prepared
19 to give short notice; in other words, I am consulted,
20 I am going to get an injunction. I will phone up
21 and sometimes there is a great problem in knowing
22 who to phone up to give notice to because unions use
23 different counsels --

24 THE COMMISSIONER: Assuming that is
25 cleared up.

26 MR. STRINGER: Assuming that is
27 cleared up, I can telephone Mr. Z and say, "John, I
28 am now working on an injunction for so and so, "I am
29 going to have my material ready and I am going to
30 appear before the local judge tomorrow morning at 10:00

1 o'clock to argue it. Be there". That is fine, I
2 don't see anything wrong with that.

3 THE COMMISSIONER: Why not take your
4 witnesses along?

5 MR. STRINGER: I will tell you why,
6 sir. I have given consideration to this because
7 I know the issue has arisen before this Commission,
8 the question of what is wrong with viva voce evidence.
9 Basically, as an abstract or as a real principle,
10 there is nothing wrong with viva voce evidence. The
11 trouble with viva voce evidence is, if you must have
12 viva voce evidence in the first instance to get
13 your injunction, then I believe it is open to the
14 unions to frustrate your obtaining the injunction.

15 THE COMMISSIONER: How?

16 MR. STRINGER: If I call my witnesses,
17 surely the union is entitled to call their witnesses.

18 THE COMMISSIONER: If they are
19 produced, yes.

20 MR. STRINGER: And I am not entitled
21 to my injunction until their witnesses have been
22 heard. It would be a very simple matter for the unions
23 to call 20, 30, 50, 100 witnesses.

24 THE COMMISSIONER: That would lie
25 within the discretion of the judge. If all they
26 did was come in and repeat something half a dozen
27 times ---

28 MR. STRINGER: Well, with respect, I
29 would suggest something like this: That in the
30 first instance --- yes, let us give the union notice

1 where it is possible; let us argue this first stage
2 of the injunction based on affidavit evidence, then
3 let us continue at that injunction and get the viva
4 voce evidence heard, but let us have the injunction
5 going on, let us have the injunction in existence
6 while the viva voce evidence is being heard.

7 THE COMMISSIONER: That really would
8 depend upon the nature of the matter which justifies
9 an application. It may be that you want to act
10 immediately, but in the other cases there may be a
11 desire to end it shortly but not as immediately as
12 may result in matters that have been suggested to
13 the Commission.

14 MR. STRINGER: Mr. Commissioner, where
15 you have a wildcat strike, or this other kind of
16 unlawful picketing, it is part of the union's
17 strategy; they know they are going to be enjoined
18 but it is part of their strategy to drag it out
19 if they can. The two or three days they can harass
20 suits them very well. If they can get this same
21 delay by bringing in witnesses -- and you don't
22 know how long you are going to hear witnesses until
23 you have heard them.

24 THE COMMISSIONER: But if you can
25 assume on the initial injunction that it is illegal,
26 surely it won't take very long to establish that
27 with witnesses.

28 MR. STRINGER: It won't take very
29 long to establish it with witnesses. By the same
30 token you are then open whereby the union can call

1 other evidence.

2 MR. POLLOCK: But they cannot call
3 evidence to contravert the fact that there is no
4 certification or that this is an unorganized job
5 or that there is a collective agreement.

6 MR. POLLOCK: Why does an employer
7 ask legal assistance in leave to prosecute an injunction?
8 The reason is he is not doing it lightly. It costs
9 him quite a considerable amount of money and it must
10 be because he believes something is unlawful.

11 MR. STRINGER: No, I will pass that
12 for the moment. My position is that leaving the
13 obtaining of an injunction in the first instance in
14 a situation where there is not a lawful strike in
15 existence is leaving the whole machinery open to
16 abuse and is giving the defendant party a tool which
17 can be used with great efficacy.

18 THE COMMISSIONER: I say you are
19 suggesting an abuse which has never been tested and
20 as far as I can see at the moment, never will succeed.
21 If your answer is illegality, that is not difficult
22 to prove.

23 MR. POLLOCK: We are in a different
24 area, I agree, when we are talking about a lawful
25 strike and the type of conduct that ought to be
26 permitted, then a hearing might last a long time.
27 But in this area, and you say it is so clear it is
28 illegal, then you would have to call one witness to
29 testify to the fact that there is no contract and
30 no agreement and no certification - all these things -

1 and then sit down. Then the other side is surely
2 going to be asked by any judge sitting on the case:
3 "Have you got any answer for that particular allegation?"
4 If he has not got any, then he can call witnesses
5 forever and ever but it is not going to change the
6 fact and I am sure the judge will appreciate that
7 and will want to hear evidence on that particular
8 aspect.

9 MR. STRINGER: If the injunction
10 is obtainable, and possibly only experience will tell,
11 is obtainable with that facility, it might well be
12 tried, but I am a skeptic on it, to be very honest
13 with you. I don't think it is as simple, with the
14 greatest of respect, gentlemen, I don't think it is
15 that simple and I feel it would be too open to abuse
16 and too open to delay. We must bear in mind that
17 the unions have been highly critical of the ex parte
18 injunction. However, the statistics in Ontario are
19 such that ex parte injunctions, to my knowledge, have
20 never been reversed on the return of the motion.

21 THE COMMISSIONER: That has been pointed
22 out. That is quite true and that strengthens your
23 case and weakens theirs because, in the majority of
24 cases, there is really no answer.

25 MR. STRINGER: But what is wrong with
26 the ex parte injunction? Why do away with it on
27 the grounds it is not fair when it has been proved
28 in experience to be fair? There is nothing wrong with
29 it.

30 MR. POLLOCK: It has not been proved

1 to be fair and it has not been proved to be unfair.
2 There is a difference.

3 MR. STRINGER: No, I don't agree with
4 you.

5 THE COMMISSIONER: It bears the
6 impression of the unfair.

7 MR. STRINGER: It may do that as a
8 result of this smear campaign but I suggest that is
9 not justified because if it was unfair then surely
10 we would be able to say that in 50 per cent of the
11 cases or 20 per cent of the cases or 5 per cent of
12 the cases injunctions have been reversed when they
13 have been heard on return of the motion.

14 THE COMMISSIONER: Yes, but if it
15 does not really prejudice you, if it does not injure
16 you or damage you, what is the difference?

17 MR. STRINGER: I am not sure that it
18 won't. If it does not, then I agree with you, sir,
19 there is no difference. If there is no prejudice,
20 if there is no delay, if there is, in fact, no
21 injury, then I would agree. I don't care if we do
22 it one way or the other way. I am not so sure that
23 in the mechanics of it there will not be delay. I
24 am prepared to accept viva voce evidence only provided
25 that there is no delay.

26 MR. POLLOCK: There is usually in the
27 order that is obtained, an undertaking as to the
28 damages.

29 MR. STRINGER: That is correct.

30 MR. POLLOCK: You and I both know that

1 is really an unrealistic undertaking because you
2 cannot prove those damages -- you will tell me later
3 on what the damages are or have been suffered by
4 somebody who has been enjoined in a labour dispute.
5 Perhaps the only solution to that to maintain this
6 balance is to deem some damage, if you get an
7 injunction, ex parte or without notice, and it is
8 later established that it is not based on merit,
9 then the employer should pay, or whoever obtained
10 the injunction should pay a certain amount of damages
11 per day, fixed at a thousand dollars, or something
12 like that.

13 THE COMMISSIONER: You may get into
14 exculpatory damages.

15 MR. STRINGER: Mr. Commissioner, we
16 are talking for the first time about viva voce evidence
17 and the obtaining of an interim injunction. Why
18 don't we talk in terms of maintaining the ex parte
19 injunction under these circumstances, with the viva
20 voce evidence on the return of the motion? Then,
21 if that does not work, if after a period of experience
22 it is found that the viva voce evidence shows that
23 the affidavit evidence has not been reliable, nothing
24 is static, then ---

25 THE COMMISSIONER: Why not try it first?

26 MR. STRINGER: Then we are assuming
27 there is something wrong with ex parte injunctions
28 and I don't accept that.

29 MR. POLLOCK: You are in danger of
30 hearing only one side.

1 MR. STRINGER: There is an inherent
2 danger but experience has shown that the danger is
3 not realistic because of the fact that ex parte
4 injunctions have stood up.

5 THE COMMISSIONER: Not always. I
6 know of one case where it was recalled.

7 MR. POLLOCK: After the damage had
8 been done.

9 MR. STRINGER: That might be one case
10 out of -- I don't know how many, but I have the report
11 in my brief case of the 700 that have been heard in
12 Ontario in the past few years.

13 THE COMMISSIONER: I suppose if you
14 said that one case taints the whole.

15 MR. STRINGER: Well, I don't accept
16 that.

17 MR. POLLOCK: Instead of having
18 formal requirements, if you can bring your witness
19 to court that morning and the other side is
20 represented there, and you put forth this evidence
21 that there is illegality, the strike is illegal and
22 the judge perhaps at that stage can say, "All right,
23 have you got anything to answer?" to the union and
24 the union will say, "We have some other witnesses
25 but not on this point". The judge will say, "I will
26 give you a temporary restraining order now and if you
27 want to extend on during the afternoon and hear
28 witnesses, I will revoke it".

29 MR. STRINGER: That is all right,
30 or granting of the injunction on a prima facie case --

1 if you establish a prima facie case, which is what
2 you are establishing.

3 MR. POLLOCK: With an opportunity to
4 answer.

5 MR. STRINGER: But having established
6 a prima facie case, then you are entitled to the
7 injunction and the defence then comes in and that
8 is fine. But, the great danger is that we must
9 eliminate the chance of this being used for the
10 purposes of delay, for the purposes of frustrating
11 the plaintiff in obtaining his injunction.

12 THE COMMISSIONER: A delay might
13 result in very serious loss. We had an instance
14 stated in which, if the injunction had not been
15 obtained quickly, the damage might have been in the
16 vicinity of over \$1 million. That case is unlikely
17 to occur frequently, but I must say you could bring
18 your witnesses and have their evidence in much less
19 time than it would take you to dictate their instruc-
20 tions and prepare affidavits and get them ready for
21 mailing and then take the time of the mailing.

22 MR. STRINGER: I think I must agree
23 with that to a certain extent, yes, I think you are
24 quite right; but I do not particularly agree with
25 the proposition that the injunction should be this
26 quickly obtainable only where you can demonstrate
27 this overwhelming amount of damage.

28 THE COMMISSIONER: No, but that would
29 influence the amount of evidence that would be needed
30 to be presented, to have no delay whatever. In the

1 ordinary case what you want, what the employer asks
2 for is to enable him really to bring in outside men.

3 MR. PAULIN: Mr. Commissioner ---

4 MR. STRINGER: Just a moment. We
5 are not asking for outside men.

6 THE COMMISSIONER: Or to stop the
7 suspension of other work that is not in the contracting
8 job.

9 MR. STRINGER: In organizational
10 picketing the employer is not asking that. He is
11 asking to be able to continue with the men he has.
12 In a wildcat strike he is not asking for outside
13 men. I am not talking about a lawful strike.

14 THE COMMISSIONER: He is concerned
15 with the annoyance at his plant.

16 MR. STRINGER: He is concerned with
17 the fact he has a contract to produce a building
18 and that he cannot get it done because someone is
19 picketing and people ---

20 THE COMMISSIONER: I have no doubt
21 in the world you can get it just as quickly by taking
22 along two or three witnesses as you can by presenting
23 two or three long affidavits.

24 MR. STRINGER: I would have to agree
25 with that. I would buy that if we could have the
26 machinery and the assurance that the injunction would
27 then be available on the proving of the prima facie
28 case, and then if the defence wanted to produce
29 evidence thereafter, it could, just so that the
30 defence evidence would not be permitted to delay the

1 granting of the injunction.

2 MR. POLLOCK: We will take the submission
3 as far as collective bargaining is concerned back
4 to the membership and see if they will ratify that.

5 MR. STRINGER: As an afterthought,
6 which does not appear in my brief, in view of the fact
7 that the courts have held that these three types of
8 picketing are unlawful and are enjoined, I can see
9 no argument against creating statute laws specifically
10 prohibiting picketing in these situations. There is
11 no reason why there couldn't be now a declaration
12 in statute law prohibiting picketing in support of
13 a wildcat strike, a jurisdictional dispute or an
14 organizational campaign.

15 MR. POLLOCK: What is a wildcat strike?

16 MR. STRINGER: It is a common term,
17 it is synonymous with an unlawful strike. It is an
18 unlawful strike.

19 MR. POLLOCK: It is not really
20 synonymous because a wildcat strike has a meaning too,
21 that it is an unsanctioned strike, a strike that is
22 not sanctioned by the union.

23 MR. STRINGER: All right, I will accept
24 that. It is a specific type of unlawful strike.

25 THE COMMISSIONER: A spontaneous
26 outburst.

27 MR. STRINGER: That is a pretty
28 benevolent phrase.

29 MR. POLLOCK: It takes two words, I
30 am in favour of brevity.

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1 MR. STRINGER: Then if I may go on:

2
3 (Mr. Stringer continues reading brief from page 12
4 down to "...obtain their objectives." page 18.)

5 And this has been admitted by unions which appeared
6 before this Commission. They have finally agreed
7 and admitted it in these cases.

8 MR. POLLOCK: Some have and some
9 have not.

10 MR. STRINGER: Well, some have which
11 removes it from the area of speculation.

12
13 (Mr. Stringer continues reading brief from page 12
14 down to, "...to the present system." page 13.)

15 In other words, I feel, Mr. Commissioner, that there
16 is an obligation on us to explore what might be an
17 alternative and to see if it might be workable.

18
19 (Mr. Stringer continues reading brief from page 13
20 down to "...those two industries." page 13.)

21 MR. POLLOCK: That is the only reason,
22 is it? You don't want to gore anybody else's ox in
23 this case, do you? I suppose the employees in the
24 construction industry can say a lot about the
25 industrial relations of industries and the industries
26 will come in and say, "Well, this won't apply to
27 our particular purposes but it will apply to
28 construction".

29 MR. STRINGER: Well, actually, I am
30 appearing on behalf of construction but I am also

1 familiar enough and engaged enough in the industrial
2 scene that I feel I want to talk about it in the
3 industrial environment of a plant first because I
4 feel this is important.

5 MR. POLLOCK: I think you mention
6 later on, some of the distinctions and you talk about it.

7 MR. STRINGER: Yes, I do.

8 (Mr. Stringer continues reading brief down to, "...or
9 conciliation officer." on page 13.)

10
11 And really, the officer doesn't release a report
12 but the Minister tells the parties that he is not
13 going to appoint a board.

14 MR. POLLOCK: Why do you make all the
15 non-voting people negative votes?

16 MR. STRINGER: Because in many cases
17 you have an industrial situation where everyone is
18 not a union member in the bargaining unit in the
19 company.

20 MR. POLLOCK: Well, I will let
21 everybody who is a member of the unit vote but if
22 there are 100 people in the unit and only 50 vote,
23 then you would never ever get a vote in favour of
24 a strike.

25 MR. STRINGER: Then there shouldn't
26 be one. A minority of employees in a plant should
27 not be able to take and shut the plant down.

28 MR. POLLOCK: But there are 49 of the
29 people who are interested enough to vote who vote
30 in favour of going on strike and the other 50 people

1 couldn't care less, they don't want to cast a ballot
2 one way or another.

3 MR. STRINGER: Oh, they don't want
4 a strike. The implication is just as valid. They
5 haven't got him out to vote but they know by not
6 voting it is the same as a ballot against the strike
7 so they don't vote. This happens today in
8 certification cases.

9 MR. POLLOCK: That doesn't make it
10 right, Mr. Stringer.

11 MR. STRINGER: It doesn't make it
12 wrong.

13 MR. POLLOCK: I will tell you why
14 it makes it wrong from the point of argument. It
15 provides a method whereby somebody's negative action,
16 that is not voting, will demonstrate to an outside
17 party, to the employer, for example - if a person
18 goes in to vote the employer doesn't know whether
19 that person is going to support the union or whether
20 he is going to vote against the union, but he knows
21 the way the present ballots are counted and the way
22 the voting constituency is arrived at, that if the
23 man doesn't vote, then he doesn't definitely support
24 the union.

25 MR. STRINGER: Not that he doesn't
26 support the union, that he doesn't want the strike.

27 MR. POLLOCK: I am talking about the
28 certification area now.

29 MR. STRINGER: Fine, I agree with you.

30 MR. POLLOCK: So that the employer

1 perhaps has some method of determining what people
2 are voting in favour of the union.

3 MR. STRINGER: Yes, I have got to
4 agree with that, Mr. Pollock, as it applies to the
5 certification vote but I don't think the same
6 reasoning applies to a strike vote.

7 MR. POLLOCK: When you said you didn't
8 think it was unfair or fair, I said I would show
9 you a reason why it is.

10 MR. STRINGER: This may or may not be.
11 Certainly it does not apply, I suggest, in the
12 case of a strike.

13 MR. POLLOCK: I think you are on
14 strong ground when you say that it ought ~~not~~ to be
15 relegated only to the members of the union in the
16 unit to decide whether there ought to be a strike or
17 not. I think you are probably in a reasonable
18 position to say that it ought to be extended to the
19 whole unit, but then make it a majority of the unit
20 or 60 per cent of the unit voting in favour of it.

21 MR. STRINGER: Let us make ^{it} two-thirds
22 of the vote. Some union constitutions provide up
23 to two-thirds, so let us make it two-thirds.

24 MR. POLLOCK: Of those voting?

25 MR. STRINGER: That would be acceptable.
26 Let us just make it so that a strike does not occur
27 capriciously. This is really the important thing.

28 MR. POLLOCK: Well, you can't really
29 make that unless the people are not enthused enough
30 about it - put it this way, no union is going to go

1 on strike if they can only muster a minority of
2 support in the unit because those people are going
3 to keep working there. So that they have to be in
4 a relatively stronger position than that, so that
5 the only question we are talking about is whether
6 those people who don't vote, who don't really care
7 enough to vote, ought to have a commanding voice and
8 I can't see it in our system.

9 MR. STRINGER; You may be right. I
10 don't know that I am prepared to retract that position,
11 though. I think the position you make has validity
12 to it, but by the same token, I think it should be
13 considered further.

14 THE COMMISSIONER: You can't use
15 ethical standards to determine a question of this
16 sort. It is a question of policy and perhaps people
17 don't want to vote against a strike positively, but
18 are willing to vote against it negatively by not
19 voting at all.

20 MR. STRINGER: Yes, this is true.
21 (Mr. Stringer continues reading brief from page 13
22 down to "...of any nature." page 13.)
23

24 Bargaining units, when the others are
25 out on strike, some of them may want to work.

26 MR. POLLOCK: But those other people
27 of the unit aren't going to be working in the unit.

28 MR. STRINGER: Oh, they may be. You
29 have supervisory staff, you have a company that has
30 a large number of supervisory people. Those foremen

1 and supervisors may be performing work while the others
2 are on strike.

3 MR. POLLOCK: What about the office
4 employees working in the production unit?

5 MR. STRINGER: It is not very realistic
6 to think of the office employees working in the
7 production unit but it is certainly realistic to
8 think of the supervisory staff working in the production
9 unit.

10 MR. POLLOCK: I think it is realistic
11 to think of them both working in the production unit.

12 MR. STRINGER: Not as a practical
13 measure.

14 MR. POLLOCK: You have the highly
15 skilled part of the production being carried out by
16 the operators, the supervisors, and you have the
17 less skilled, or more menial, or easily learned part
18 of the construction industry carried out by the office
19 workers.

20 MR. STRINGER: All right, let us deal
21 with the basics. What we have in a strike is the
22 situation where the unions or the employees or a
23 number of them say, "We think we can hurt you by
24 withholding our labour", and the company says, "We
25 don't think you can hurt us by withholding your labour.
26 Therefore, you see if you can withhold your labour
27 and we are going to see if we can get along without
28 you." This is really the structure of the whole
29 thing and within that concept or framework I would
30 say that the company can't hire new people, new

1 strike breakers, but the company can utilize the
2 work force it has in whatever way it can and if this
3 involves the President coming onto the floor and
4 operating a press, then I say the company can do it.

5 MR. POLLOCK: All right, on what terms
6 can he attract those people back from the unit?

7 MR. STRINGER: I would imagine on
8 whatever terms he can get them back.

9 MR. POLLOCK: So we can have the
10 situation where the employer is prepared to offer
11 \$2 an hour to the union and the union says, "No, we
12 want \$2.50" and they go on strike for \$2.50 and the
13 employer can say to these people, "Well, you Charlie,
14 you Fred, come back and I will give you \$3 an hour
15 and we will defeat the strike".

16 MR. STRINGER: I don't think it can
17 be done on an individual basis. I feel it would have
18 to be done by virtue of offers. This is a dangerous
19 ground. I am not advocating the use of this to
20 undermine or to break a union. I think it becomes
21 an invalid proposition if it is to be used to break
22 a union. Therefore, I feel it must be carried on
23 within the structure of still recognizing a union.

24 THE COMMISSIONER: Then you would
25 be prepared in any event to say, both parties have rights
26 per se.

27 MR. STRINGER: In order for this to
28 work, it must be based on that concept. It can't
29 be used as a union-busting tactic.

30 THE COMMISSIONER: How do you prevent

1 the destruction of the work or the destruction of
2 the enterprise?

3 MR. STRINGER: Or the destruction of
4 the enterprise, exactly.

5 THE COMMISSIONER: What about compelling
6 office men to go down on the construction floor and
7 work?

8 MR. STRINGER: This is an interesting
9 implication. I don't see why they should be compelled.

10 THE COMMISSIONER: I am just putting
11 that out as a possibility. The question might arise.
12 They might have a union and they might say, "We can't
13 do that" and the contract wouldn't compel them to.

14 MR. STRINGER: Then you can't compel
15 them and you just wouldn't do it. That is one situation
16 which I think exists. There are also other situations
17 where there is a pretty good esprit de corps in the
18 plant and where people are prepared to pitch in and
19 I feel in that situation - these things can't be
20 rigid; it has to have the flexibility to apply to
21 the specific operation but in no case must there be
22 intimidation either of the people you want to go
23 onto the floor or of the people who do want to come
24 onto the floor.

25 MR. POLLOCK: The only problem with
26 letting non-bargaining unit people - and I am not
27 talking so much about the foremen and supervisory
28 personnel because perhaps they are closer to the
29 bargaining unit than are office personnel - the
30 problem with bringing those people in is that then

1 you don't need an overactive imagination to conceive
2 of people saying, "All right, office workers who want
3 to work here down into the plant, we will replace you
4 with other office workers who aren't on strike" and
5 then you just funnel them down through the office.

6 MR. STRINGER: I am not advocating
7 the scheme where you do indirectly what you can't
8 do directly. I am not talking about subverting
9 something. I think what I am suggesting here is
10 a rather new concept and it is a concept that I am
11 going to admit has not been fully and completely
12 explored. I have discussed it with a number of people
13 before presenting it to this Commission because I
14 have had some concern about it.

15 THE COMMISSIONER: We are prepared
16 for your ideas because we have thought of it.

17 MR. STRINGER: It may be, sir, that
18 in this concept possibly you should not bring people
19 from the office in. I don't know. I think this
20 bears exploration. All I can say is I think the
21 question bears exploration.

22 THE COMMISSIONER: Suppose you have
23 a strong union against a weak industry or plant. I
24 use the word "industry" in the sense of the total
25 industry across the province. We are dealing with
26 a plant. Suppose a plant is relatively weak and
27 the union is relatively strong, maybe an international
28 union: If you subscribe to these conditions now
29 that you have laid down at the outset, you might
30 put the industry or the plant in a very serious

1 situation. It might go down. Have you considered
2 the manner in which that might be prevented by
3 discretionary action, say, of a tribunal?

4 MR. STRINGER: I have considered it.
5 I know the question has arisen. I am extremely
6 leary of it, sir. It is a very difficult concept.
7 You see, we talk about a tribunal: Now, any of
8 these systems, in order to work, require people,
9 and we are finding in our present structure in
10 industrial relations, a shortage of skilled and
11 qualified people. Now we are thinking about embarking
12 on a new and more sophisticated approach, possibly
13 which is going to require even more qualified people,
14 and I am frightened of concepts in the abstract that
15 do not take into consideration machinery and the
16 people who are going to run it, because the whole
17 thing is geared to that.

18 THE COMMISSIONER: Assume the
19 situation which I have stated, and you will find
20 something has to be done to save that industry. It
21 is a desirable industry. It is a rare industry
22 that is not desirable. The only way it can be
23 saved is by allowing it to employ outside workers,
24 to restore an approach to equality of position.
25 Would there be any objection to having a tribunal
26 say, "Yes, we relieve you of the obligation of not
27 employing outside people. You can, for the purposes
28 of restoring your position or maintaining your position,
29 employ outside people who are willing to work".

30 MR. STRINGER: I am not going to try

1 to evade an answer, sir, but I cannot give you an
2 answer because I feel this is an area which is
3 extremely delicate and would require a tremendous
4 amount of probing.

5 THE COMMISSIONER: Why I put that to
6 you is that you have at least approached that point.

7 MR. STRINGER: Yes. First of all,
8 sir, there are a couple of things and your question
9 brings to mind a situation I did want to mention.

10 What I have suggested is not free from a number of
11 problems. One problem is, take a situation where
12 you have a large company, say, a steel company ---

13 THE COMMISSIONER: But the question
14 does not arise there.

15 MR. STRINGER: This is a different
16 question and I am going to digress before I come
17 back to that if I may, sir. The steel company, sir,
18 has a collective agreement with the steelworkers' union
19 - let us take the Algoma situation with the brick-
20 layers. I think what we must do, we must prevent
21 the situation whereby a handful of employees such as
22 the bricklayers or the operating engineers, through
23 their lawful strike, can shut the plant down.

24 THE COMMISSIONER: You can do that
25 by abolishing the picket line.

26 MR. STRINGER: Yes. However, somewhere
27 along the line those furnaces are going to have to
28 be relined and you must have bricklayers to do it.

29 THE COMMISSIONER: Maintenance is one
30 of the fundamental conditions. I think that is

1 accepted by the unions, because that is what they are
2 looking to go back to.

3 MR. STRINGER: Yes, but they are not
4 always so rational in an economic struggle -- in a
5 strike.

6 THE COMMISSIONER: That is where it
7 is so vague and cloudy.

8 MR. STRINGER: Yes, to some extent.
9 Dealing with this other point where you say can a
10 tribunal be established to save an industry which
11 is desirable.

12 THE COMMISSIONER: Or a union.

13 MR. STRINGER: Or a union, yes.
14 First of all, as I say, this scheme is not based
15 upon breaking the union, and therefore, the union is
16 going to have to deal with those employees and if
17 those employees are unhappy about the way the unions
18 handle their affairs it is up to them to turf them
19 out, but we are not advocating an employer under
20 this scheme should be able to circumvent the union
21 and get his employees back and then say, "They are all
22 back and I won't sign a contract", which an employer
23 can do today. We are not asking for that. I am not
24 suggesting that because I think that would damn this
25 whole proposal as a union-busting scheme, which it
26 is not.

27 Now, dealing with the other situation,
28 when you say, "Let us assume the union is strong and
29 industry is weak". When you say "industry," do you
30 mean a single company within the industry?

1 THE COMMISSIONER: Yes, take that
2 because that is a simple situation. You have David
3 and Goliath, David with a slingshot.

4 MR. STRINGER: I think this is an
5 inherent danger, but I would not be prepared to say
6 that there should be a tribunal enter into that
7 matter until we have some experience in it. I am
8 extremely cautious about a tribunal of that sort.

9 THE COMMISSIONER: On the other hand,
10 if the union were threatened, you could allow the
11 men to go out and get other employment temporarily.
12 These are the factors which lie open to be operated.

13 MR. STRINGER: I think that is a
14 little far-reaching for me to accept at this stage.

15 THE COMMISSIONER: Well, that may be.

16 MR. STRINGER: Yes, sir, at this stage.
17 Then, the third condition which I would lay down
18 is that striking employees, in order to protect
19 their jobs in a struck plant, must not be permitted
20 to work elsewhere.

21 (Mr. Stringer continues reading brief down to "...for
22 such ex-employee." on page 14.)
23

24 THE COMMISSIONER: That is logical
25 but conversely, where the union is weak, that
26 condition could be eliminated, eliminated by
27 discretionary action.

28 MR. STRINGER: It is so difficult,
29 sir, to say what is a strong union and what is a
30 weak union.

1 THE COMMISSIONER: It is as they are
2 presenting themselves to each other. It is not
3 difficult for a person to see whether or not there
4 is a danger of this union or this enterprise, this
5 shop, being destroyed. Those things have happened.

6 MR. STRINGER: Yes, they have happened
7 but in order to buy that we have to buy the corollary
8 and I am just not open to it -- I am open to discuss
9 and think about it but I really can't say, yes, I
10 agree with it or that no, I do not.

11 THE COMMISSIONER: If you would do that
12 and let us have the benefit of your thinking, we
13 would be much obliged.

14 MR. STRINGER: Thank you. I would
15 like time to consider that..

16 MR. POLLOCK: On this you might
17 consider the fact that the collective bargaining
18 system in our mixed economy or free enterprise, or
19 whatever it is, takes the parties as they are, strong
20 or weak, and the strong win and the weak lose.
21 Strength is not only measured in financial strength
22 but in craft strength and all these other things.
23 Many of these strong craft unions do not have any
24 money.

25 MR. STRINGER: I think we have to
26 accept this, the strong and the weak, without
27 resorting to the law of the jungle, and I think this
28 is really what the Commissioner is saying: Is there
29 some way -- I believe we must preserve in the framework
30 of an economic struggle, but without resorting to the

1 law of the jungle.

2 THE COMMISSIONER: That is exactly
3 the objectionable feature of it.

4 MR. STRINGER: But if a party thinks
5 it is going to be bailed out by a tribunal just because
6 it is weak, it would be in its interest to
7 be weak, and I think it could undermine the
8 collective bargaining in the whole structure.

9 THE COMMISSIONER: Their approach
10 and conduct would be relevant to that.

11 MR. STRINGER: With the greatest
12 respect I don't think there are too many men in this
13 land today who are able to solve these problems.

14 THE COMMISSIONER: It may be that
15 here they are, the stripling and the giant and they
16 have seen fit to fight each other and let them fight.

17 MR. STRINGER: There is a suggestion
18 abroad in Canada now that there be ten unions in
19 Canada. We seem to be gravitating towards larger
20 unions and there may be ten unions in Canada.

21 THE COMMISSIONER: But keep in mind
22 this, that such a restriction as you set forth here --
23 and I think it is most interesting -- is confined
24 to small industry because the large industry is not
25 affected. Today, if you have a thousand people
26 or even 500 people, especially where they are skilled
27 and they go on strike and there is cohesion in that
28 union, the plant stops work -- it stops production.

29 MR. STRINGER: I am not so sure the
30 plant would stop production. It would eliminate the

1 area of intimidation.

2 THE COMMISSIONER: But they do it today.

3 MR. STRINGER: They do it today because
4 today it is unsavoury for a large company in the
5 public eye to engage strike breakers. They are
6 concerned about their public image.

7 THE COMMISSIONER: Take Stelco, Algoma,
8 Sudbury: When the strike takes place and the strike
9 is one where there is solidarity, the plant stops.
10 The production stops, and that is the object which
11 lies as the purpose of the strike.

12 MR. POLLOCK: Are you saying that
13 if there were not this stigma attached to the hiring
14 of strike breakers, and they could find some people
15 to work in their plants, that some of these plants
16 would continue?

17 MR. STRINGER: They have done it in
18 the past.

19 MR. PAULIN: I think you have to
20 differentiate between the strikers and the maintenance.
21 The plant is a physical thing and it belongs to
22 shareholders. If you let a coke oven cool off the
23 thing is through, it has to be relined. In the
24 steel company which you mentioned they were restricted
25 by a line of force which was the picket line.

26 THE COMMISSIONER: No, I am assuming
27 that the maintenance is accepted as a duty.

28 MR. PAULIN: It isn't, though.

29 THE COMMISSIONER: Well, I am speaking
30 about regulation now.

1 MR. STRINGER: Mr. Commissioner, I
2 am prepared to consider -- I think this takes into
3 consideration that production will stop, but the
4 people who are on strike, their production stops too.
5 Their source of income stops too.

6 THE COMMISSIONER: That is right.

7 MR. STRINGER: And we have a pure
8 economic struggle.

9 THE COMMISSIONER: Yes, between
10 people who are struck.

11 MR. STRINGER: Yes, and then we have
12 the question, how long is the United Steelworkers
13 of America going to pay strike pay to its members?
14 How long is it prepared to do that before it goes
15 to the steel company and says, "Okay, now let us
16 talk business. We don't want to spend any more
17 money".

18 MR. POLLOCK: That is right.

19 THE COMMISSIONER: Take it now in
20 that situation.

21 MR. STRINGER: Yes, I think this
22 covers that.

23 THE COMMISSIONER: I think this is
24 a fruitful discussion.

25 MR. STRINGER: Thank you, sir.

26 MR. POLLOCK: On the assurance that
27 the striker does not take other employment, how do
28 you regulate that?

29 MR. STRINGER: People I have discussed
30 it with say, "What about the mechanics? How do you

1 regulate this?". I think it can be regulated. We
2 all today, in Canada, have social security numbers.
3 The average workman in a plant has ^{an} unemployment
4 insurance number. I think it would be a relatively
5 simple matter to make it necessary that when someone
6 applies for and obtains employment somewhere that he
7 give his unemployment insurance number.

8 MR. POLLOCK: He has to have his
9 book --- he has to take his book.

10 MR. STRINGER: I want to talk about
11 that later too. He has to have his book and he
12 gives his book in and immediately -- he can't get
13 employment without a book. It is an offence for
14 anybody to employ him without a book. When that
15 book goes in it immediately goes to Unemployment
16 Insurance the same day and Unemployment Insurance
17 notifies the past employer that so and so has now
18 obtained employment somewhere else, and I think it
19 is just that simple. I think it is a very simple
20 matter.

21 MR. POLLOCK: The only difficulty
22 with the book is that you can go and get about seven
23 or eight copies of the book.

24 MR. STRINGER: This is the other end
25 of it and the great difficulty. Even if you can get
26 7 or 8 copies of the book the Unemployment Insurance
27 still has a record of your name and your book, and
28 if they give you a book you have still got the same
29 number. If you go to the new employer, he has got
30 the number and it goes back to Unemployment Insurance

1 and they tell the people at the steel company that
2 their man, John Doe is now working at Firestone.

3 THE COMMISSIONER: And moreover, if
4 he took a job like that you could easily provide
5 that the original employer, who was the victim of a
6 strike, can employ a man who will go and work for
7 him.

8 MR. STRINGER: That is right. In
9 point (3), "If a striker takes other employment he
10 automatically is deemed to have severed employment
11 with the struck firm and the struck firm is free to
12 immediately hire a replacement for such ex-employee.",
13 because the unions say, "We want to protect these
14 people with jobs against strike-breakers". If a
15 man goes and works somewhere else he is not interested
16 in protecting his job; he can't have it both ways.
17
18 (Mr. Stringer continues reading brief down to "...strike
19 is in progress." on page 14.)

20 THE COMMISSIONER: If you put up a
21 notice that the plant was struck that would be
22 sufficient.

23 MR. STRINGER: Yes.

24 (Mr. Stringer continues reading brief down to "... to
25 protect their jobs." on page 14.)

26
27 MR. POLLOCK: This majority does not
28 include the supervisory people or these other people.

29 MR. STRINGER: No, it is the employees
30 and the bargaining unit. At the time of the strike

1 there were 500 people in the bargaining unit. Now,
2 let us assume that somewhere along the line, 200 of
3 those go to work elsewhere and the company hires
4 200 people to replace them. Then, let us assume
5 another 100 who had formerly been on strike come into
6 work. There are now 300 people in the plant which
7 is a majority, it is 60 per cent actually of the 500
8 originally. At that stage the strike is over and
9 if these people want to protect their jobs they have
10 to bend to the will of the majority and they must
11 return to work.

12 MR. POLLOCK: Take another vote.

13 MR. STRINGER: Well, it is a vote
14 without a vote. We have to have machinery for
15 establishing a number and that is a very simple
16 matter. From there on if you have established
17 the number then they return to work.

18 (Mr. Stringer continues reading brief down to
19 "...coercion or intimidation." on page 14.)

20
21 If people who are going into the plant
22 and are going to work are going to be intimidated,
23 if their families are going to be threatened and
24 this sort of thing happens, then the whole framework
25 of this ideal situation breaks down.

26 MR. POLLOCK: Of course, most of
27 those coercion and intimidation and violence and
28 threats are prohibited now.

29 MR. STRINGER: Yes, they are prohibited
30 now.

1 THE COMMISSIONER: It is extremely
2 difficult to handle.

3 MR. STRINGER: Either we are going
4 to be a civilized people or we are not.

5 THE COMMISSIONER: I think we will
6 all agree with that. It is a case of civilized
7 action or uncivilized action.

8 MR. STRINGER: Yes, in other words
9 they are saying, "We admit we are uncivilized, we
10 are going to continue to be uncivilized as long as
11 employers are going to hire strike breakers to come
12 in and take our jobs". If they really mean this,
13 if they are really sincere about that, let us
14 eliminate that clause, let us take away the right,
15 to hire the strike breaker. "Now are you prepared
16 to be civilized?". If they are not, then maybe
17 we have to go back to what we had before.

18 THE COMMISSIONER: You see the
19 statute itself recognizes in large measure what
20 we have been discussing because it preserves the
21 status of employee notwithstanding the strike.

22 MR. STRINGER: That is right. The
23 CPR case was a case of that.

24 MR. POLLOCK: I don't know whether
25 the CPR goes that far, the CPR & Zambri.

26 (Mr. Stringer continues reading brief down to
27 "...of those industries." on page 15.)
28

29 MR. STRINGER: Now, before I discuss
30 this, Mr. Commissioner, what we are prepared to

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1 envision and what we have just discussed is that
2 the striking employee, in order to hold his job,
3 must not obtain employment elsewhere and then we
4 say if he goes and obtains employment elsewhere
5 then he loses his job. The modification I make
6 in dealing with the trucking industry and the
7 construction industry, because of the nature of
8 those industries is he doesn't have the alternative
9 of getting work elsewhere: We cut this off.

10 THE COMMISSIONER: Getting what?

11 MR. STRINGER: Of taking another job.
12 Under the first situation he has the alternative
13 of taking other work at the price of losing his own
14 job. Under trucking and construction I say he
15 doesn't even have that alternative because it would
16 be meaningless then, in the peculiarity of the
17 situation.

18 THE COMMISSIONER: It seems to me
19 the greatest assistance that is to attracting
20 business is that it prevents a small group holding
21 up a very large undertaking.

22 MR. STRINGER: Yes.

23 Now, in trucking first -

24 (Mr. Stringer continues reading brief down to "... by
25 the companies." on page 15.)

26
27 This was a problem that existed and
28 just permitting them to do this, they were all
29 working or most of them were working and so there
30 was no need to come to the bargaining table in a

1 responsible manner. The same thing applies in the
2 construction industry.

3
4 (Mr. Stringer reads brief down to "... and continue
5 working." on page 15.)

6 MR. POLLOCK: Or even continue
7 working in the same city.

8 MR. STRINGER: Or even continue
9 working in the same city.

10 MR. POLLOCK: Or ~~non~~-members of
11 the association.

12 MR. STRINGER: Or if they are
13 painters they do housework for the summer.

14
15 (Mr. Stringer continues reading brief down to
16 "...abuse of power results." on page 15.)

17 THE COMMISSIONER: That is the very
18 point that you discussed about this discretionary
19 action.

20 MR. STRINGER: Yes, I know it is, sir.

21 THE COMMISSIONER: You say it is
22 maintained but the question is, how is it maintained?

23 MR. STRINGER: It is this question
24 of how and I feel that is the area that requires
25 the exploration.

26
27 (Mr. Stringer continues reading brief down to
28 "...win every dispute." on page 16.)

29 That concludes my remarks on the
30 initial part dealing with injunctions.

1 the problem completely because an existing problem
2 today in the industry is companies from the United
3 States which have international agreements; in
4 other words, they have agreements with the international
5 union there and they are permitted to come over and
6 work, there can be a strike on in Hamilton, say,
7 among the bricklayers and there is no bricklaying
8 being done for any member of the Hamilton Construction
9 Association - and that is a pretty big group. However,
10 the XYZ Company can come in from the United States,
11 it has an international agreement with the bricklayers'
12 union and the union is only too happy to supply this
13 company with employees in order to get some funds
14 for their members. So even if you have province-wide
15 bargaining you haven't solved that problem.

16 MR. POLLOCK: They don't even have
17 to come in from the United States. They can come
18 in from any place with national agreements or
19 international agreements.

20 MR. STRINGER: But you mentioned the
21 question of province-wide bargaining and I say that
22 not even in that broad a scope will it be effective
23 and there are quite a number of American companies
24 which do come over here and work.

25 THE COMMISSIONER: It could be the
26 United Nations.

27 MR. STRINGER: It could be a possibility,
28 sir.

29 If I might go on, I will now deal with
30 jurisdictional disputes.

1 (Mr. Stringer continues reading brief down to
2 "...accept jurisdiction either.", on page 19.)

3 So we have both forms. The Ontario
4 Labour Relations Board is by statute, prohibited
5 from taking jurisdiction: The Joint Board refuses
6 to take jurisdiction so the dispute was left in limbo
7 and the parties were left to their own devices to
8 settle it. I think the Commission will agree this
9 is clearly a highly unsatisfactory state of affairs.

10 (Mr. Stringer continues reading brief down to
11 "...Canadian Pittsburgh Industries cases." page 19.)
12

13 MR. POLLOCK: Well, it is really a
14 related one, it is not a different one. The reason
15 for the amendment to 66 (8) was to cover that, I think,
16 and let somebody else make up your agreement because
17 the unions were unhappy about it being assigned here.

18 MR. STRINGER: With respect, I don't
19 think that really does follow and certainly, in view
20 of the Joint Board's policy statement, it can happen.

21 MR. POLLOCK: What I mean is, you
22 have to act on both of these to dovetail all of these
23 together.

24 MR. STRINGER: Oh, I think you do,
25 sure. 66 (8) is only one problem. 66 (1) is
26 another problem. If you solve 66 (8) by repealing
27 it you still haven't solved the jurisdictional disputes
28 problem so I completely agree with you.

29 MR. POLLOCK: So your position in
30 a nutshell is repeal 66 (8), give the Ontario Labour

1 Relations Board absolute power to determine juris-
2 dictional disputes but broaden their terms of reference
3 to allow them to consider almost the same type of
4 thing that the Joint Board in Washington decides.

5 MR. STRINGER: This is something
6 that I am not saying. This last part about broadening
7 their jurisdiction is the thing which I must confess
8 I have not really come up with the solution to yet
9 and possibly we can discuss this.

10 MR. POLLOCK: Well, you have suggested
11 that "employees" be changed to "persons."

12 MR. STRINGER: No, I have not suggested
13 that.

14 MR. POLLOCK: You say, "It has been
15 suggested that the word employees ...".

16 MR. STRINGER: But we don't suggest
17 it, that is just the difficulty.

18 MR. POLLOCK: If you did suggest
19 it you might have a better chance of getting the
20 other things you suggest.

21 MR. STRINGER: But I can't suggest
22 it because of the implications that are raised. Let
23 me read this and then I will come back to it if I
24 may because this really is the thorniest problem
25 in jurisdictional disputes in Ontario. It is the
26 worst one.

27 (Mr. Stringer continues reading brief down to "...
28 inherent in Section 66 (9).", on page 20.)

29 And this is where the real rub comes in. You are
30

1 nodding, "no".

2 MR. POLLOCK: No, I am shaking "no".
3 You nod, "yes".

4 MR. STRINGER: Well, I think you are
5 nodding "no", but why?

6 MR. POLLOCK: Because I think that
7 really that is not the most significant problem,
8 the most significant reason.

9 MR. STRINGER: It is from an employer
10 point of view.

11 MR. POLLOCK: Well, it is, if you
12 really want to settle jurisdictional disputes then
13 there really shouldn't be a quarrel like you saying,
14 "Well, I want to employ these types of people and
15 not to employ these higher skilled people".

16 MR. STRINGER: Mr. Pollock, it is
17 not that easy. If it were that easy, it could have
18 been settled that way but it is not that easy: It
19 is a deeply complex problem. Why should this company
20 be told it has to hire that kind of people rather
21 than these people?

22 MR. POLLOCK: It is told that way
23 by means of a jurisdictional dispute. "If you want
24 to work on this project and you want to do everything
25 ..." you can probably do everything that is done by
26 a carpenter with labourers because some of them are
27 reasonably skilled.

28 MR. STRINGER: That is right. Now
29 look, we have a situation today - let us take the
30 company, and since we have talked about C.P.I.,

1 Canadian Pittsburgh, we will talk about it only
2 because it has been mentioned by name in a decision,
3 we must recognize that there are presently companies
4 manufacturing building products such as Canadian
5 Pittsburgh Industries. It manufactures these
6 building products in the hope that the cost of the
7 product plus the cost of construction, because of
8 the ease of construction, can be done at a cost saving.
9 But I have the consideration in developing this
10 product, in that it does not require a man who normally
11 gets \$3.50 an hour: It can be done by a man who
12 gets \$2.75 an hour. That whole product development
13 is based on this concept. Why should they be
14 prevented from developing this product which is
15 going to benefit the public at large? Why should
16 they be prevented from doing so and then told, "No,
17 you can't use lathers to install that, you must use
18 carpenters".

19 MR. POLLOCK: Perhaps that ought not
20 to be prevented on your argument and I think that
21 is the type of argument that would probably give the
22 jurisdiction to the lathers' union. //

23 MR. STRINGER: But not necessarily.
24 There is no guarantee of that. There is just as
25 much chance that the carpenters can provide reasons
26 why it should be their jurisdiction, the Canadian
27 Pittsburgh does not employ carpenters. It employs
28 lathers. It has a contract with the lathers' union.
29 Why should they be forced to recognize the carpenters'
30 union and enter into a collective agreement with them,

1 kick out all its employees who are lathers, because
2 now it has a contract with the carpenters' union it
3 has to hire only carpenters and it can't even keep
4 its own employees.

5 MR. POLLOCK: Why can't it make the
6 employees join the carpenters' union?

7 MR. STRINGER: Who is to say their
8 union will take them, for one thing? Who is to say
9 that the carpenters' union will supply those same
10 employees back to Canadian Pittsburgh? It is a very
11 complex problem.

12 MR. POLLOCK: I agree it is a complex
13 problem.

14 MR. STRINGER: It is not a question
15 of peace at any price. It is not a question of
16 providing this solution then creating other problems
17 we were talking about 3 or 5 years from now.

18 THE COMMISSIONER: It certainly would
19 interfere with existing contracts.

20 MR. STRINGER: Greatly. It would
21 greatly interfere with the right of a business to
22 hire people it wants to hire, a basic right in the
23 employee-employer relationship.

24 MR. POLLOCK: Which is already interfered
25 with in your particular case which you have been talking
26 about in the last 20 pages.

27 MR. STRINGER: Why compound the
28 problem? We are here to remedy some of the problems,
29 not to create greater problems.

30 THE COMMISSIONER: I suppose if a

1 decision had been made and it was recognized, then
2 the contractor would know what he could do.

3 MR. STRINGER: Yes.

4 THE COMMISSIONER: It is the new
5 occurrence of a jurisdictional dispute that really
6 causes the trouble.

7 MR. STRINGER: Yes, it is, sir. I am
8 tending to the conception that there must be no such
9 thing as a jurisdictional dispute leading to a strike.
10 It is something where somewhere else some other form
11 must be found to resolve that jurisdictional dispute.
12 I am not so sure it is healthy. I know it has been
13 said at greater length by someone else appearing
14 before this Commission but I don't know it is
15 necessarily healthy to envisage the crafts in the
16 old archaic forms anymore, with the changes in
17 technological developments.

18 THE COMMISSIONER: Oh, yes, we have
19 had a composite statement made on that.

20 MR. STRINGER: There is one thing
21 to consider machinery before considering jurisdictional
22 disputes as they arise on the present framework.
23 I think we have to apply some amplification of updating
24 the trade composition in industry so there is not
25 what we call a jurisdictional dispute.

26 THE COMMISSIONER: That comes back
27 to the most reliable contractor and the union.

28 MR. PAULIN: I don't think it has
29 anything to do with the contractor. It is interplay
30 between the unions and we are the victim of that.

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1 MR. POLLOCK: Yes, but you should
2 get there. If you are going to get hit on the nose
3 you might as well put the gloves on.

4 MR. PAULIN: I would like to be
5 practical and show you how far this thing can go.
6 Everybody is seeking their own jurisdiction. We
7 just recently completed a building and the glazers
8 and painters craft union of a unit came to the building
9 and on the window sash there was a wood surround
10 to put this unit in. There were 8 screws required
11 to fit this in and it would be caulked in and
12 properly set into the opening. All of this was done
13 with the exception of the 8 screws. There was
14 a jurisdictional dispute because the screwing of
15 those 8 screws belonged to the carpenters. That is
16 how silly this thing can get. That is why I say
17 it is far out of proportion. The job shuts down
18 for a couple of days while those two unions decide
19 who is going to put the window in.

20 MR. POLLOCK: Who is going to get
21 screwed.

22 MR. PAULIN: That is right. You say
23 it belongs to the contractor and I say it does in
24 no way at all.

25 MR. POLLOCK: No, I am saying the
26 contractor has got an interest and the union has
27 got an interest and if you can get all these people
28 together and lock them in a room and let them come
29 up with a solution, perhaps they will come out with
30 one.

1 MR. STRINGER: It is a question of
2 who is going to be the screwor or screwee.

3 MR. POLLOCK: Perhaps at that stage
4 we could adjourn for lunch.

5 MR. STRINGER: Would you like me
6 to finish this part on jurisdictional disputes?

7 MR. POLLOCK: All right.

8
9 (Mr. Stringer continues reading brief down to "...
10 anit-social activity." on page 21.)

11 THE COMMISSIONER: The complaint
12 there is the picket line?

13 MR. STRINGER: Yes, that is part of it
14 -- there is a double complaint, sir. There was a
15 dual problem: First of all the plumbers were offered
16 the work to install. They said, "No we will not
17 install that work because it is partly fabricated
18 in another plant where the steelworkers' union was
19 in". They were told, "Look either you do it or
20 we have to get somebody else to do it". They would
21 not do it. So, someone else did it and they walked
22 off the job. When they walked off the job the
23 other unions respected that picket line and would
24 not come to work the next day. So, we have two
25 things; we have the plumbers on strike unlawfully;
26 we also have the effect of their picketing which
27 was the restraining of other people across the
28 picket line.

29 THE COMMISSIONER: If you eliminate
30 that, then you deal simply with their abstention from

1 work.

2 MR. STRINGER: If you eliminate that
3 you deal simply with their abstention from work. You
4 earlier asked Mr. Paulin, are employees really
5 afraid to cross an illegal picket line. There is
6 no question about it, sir, they do not distinguish.

7 THE COMMISSIONER: In some cases they
8 do. Take the one at Algoma. The steel men walked
9 across the line.

10 MR. STRINGER: Well, that was a legal
11 strike for one thing. Also, what I am talking about
12 -- let us talk solely about building trade unions.
13 You have got a building trades council in the City
14 of Hamilton composed of, I think, 19 unions. One of
15 those building trade unions will not cross the
16 picket line of another building trade union. I was
17 negotiating at that time with the bricklayers union
18 while this walkout had occurred as a result of the
19 plumbers and the bricklayers also, and the carpenters
20 -- no, the carpenters went in but they were the only
21 ones that went in -- the carpenters and labourers.
22 However, the bricklayers and electricians stayed
23 out. I said to the business agent of the bricklayers
24 across the table, "Are your people respecting the
25 plumbers' picket line?". He said, "Yes". I said,
26 "Even though it is an unlawful picket line?". He
27 said, "We don't care. If it is a picket line it is
28 a picket line and we respect it". Now, this is the
29 code of honour that applies. So, I agree with you:
30 The first thing we have to get rid of is the picket

1 line; the second thing is we have to get the people
2 back to work. Those are the two problems. That
3 is the problem and it is a problem, sir, I might
4 say, that has arisen now a couple of times within
5 a short period of time in Hamilton and it is becoming
6 an increasingly serious problem where the plumbers
7 are concerned. What happened at the Steel Company
8 in one situation where the new coke ovens are being
9 built is that there was some piping which came in,
10 and the piping and the flanges came in from the
11 manufacturing company. The plumbers union said,
12 "We will not install that piping because we did not
13 put the flanges on it". They would not install it
14 and as a result of this, the unfortunate way it had
15 to be resolved was that the flanges had to be taken
16 off and put back on at a cost of \$20 thousand.

17 THE COMMISSIONER: Surely that has
18 arisen in the United States and these, I assume,
19 are international unions, and it must have arisen
20 in the United States. What was the solution there?

21 MR. STRINGER: I don't know, sir.

22 MR. POLLOCK: In one of the cases,
23 I think it was at the then Cape Canaveral, when some
24 of these technical parts of the missiles were pre-
25 assembled and the people on the site complained about
26 it, so they just paid them an equivalent amount of
27 money for the job.

28 MR. PAULIN: They did not have a fixed
29 contract. They were with the government.

30 MR. POLLOCK: Open end contracts.

1 MR. PAULIN: That is right.

2 MR. POLLOCK: We will adjourn until

3 2:30.

4 ---Luncheon Adjournment.

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---At 2:30 p.m., the Hearing resumed.

MR. POLLOCK; Mr. Stringer?

MR. STRINGER: Mr. Commissioner, the third section of the second part of the brief concerns the failure of the Ontario Labour Relations Act to deter unlawful trade union activity or to induce responsible activity.

(Mr. Stringer reads brief from "The Ontario Labour Relations Act" on page 21, down to "...of 'good labour relations'." on page 22.)

In other words, the unions know that this is what takes place. In fact the unions know that they can, at this stage, two months after an unlawful strike, that they can usually dissuade the employer from proceeding and they bear this in mind when they plan their unlawful strike or when they engage in it, because they know there is no effective, immediate prosecution.

THE COMMISSIONER: Even if leave were given, do they know it can be gathered up in the general settlement?

MR. STRINGER: I think they usually count on its being gathered up in the general settlement. Yes, sir, this has generally been the experience. While there are cases on record where prosecutions have, in fact, taken place to the very end, generally the consent to prosecute is gathered up in the final settlement. Usually, it does not even go that far. We receive monthly copies of the

1 monthly report of the Ontario Labour Relations Board
2 and it shows cases tried in the particular month
3 and cases withdrawn, and the great bulk of cases
4 withdrawn are applications for consent to prosecute.
5 These are cases that are filed and withdrawn.

6 MR. POLLOCK: I suppose they also
7 know from the experience with the injunction that the
8 injunctions never proceed anywhere to get any damages.

9 MR. STRINGER: I would imagine so.
10 I don't think the employers are necessarily looking
11 for damages when they issue a writ which claims both
12 an injunction and damages. The employers primarily
13 are interested in not vindictive action but in getting
14 the job going again, and if the injunction gets the
15 job going, this is the main thing.

16 THE COMMISSIONER: There might be a
17 claim, if there were serious property damage.

18 MR. STRINGER: Yes.

19 THE COMMISSIONER: And it was threatened
20 to continue?

21 MR. STRINGER: Yes. I would say if
22 it existed, Mr. Commissioner, for that long a period
23 of time. In other words, the time it takes to issue
24 the writ to trial, if the strike lasted that long, if
25 the injunction was not issued in the first instance
26 and a trial took place, then surely over a period of
27 several months damages would have resulted and the
28 employer would claim damages, yes, I think so.

29 MR. POLLOCK: But the supposition
30 that is made in the application for injunction is that

1 the whole thing will be aired at the trial and that
2 at least that person seeking the injunction knows
3 full well that there is never going to be a trial.

4 MR. STRINGER: I think both parties
5 realize that there is rarely going to be a trial.

6 THE COMMISSIONER: Really, that
7 entirely depends upon the extent of the damages in
8 the original onslaught. You might have \$100 thousand
9 damages in the first moment.

10 MR. STRINGER: That is right. I have
11 to agree with that completely.

12 Then the second proposed remedy, or
13 I call it an illusory remedy, is the declaration of
14 an unlawful strike.

15 (Mr. Stringer continues reading brief from "It was
16 the hope..." down to "...must be repealed.", page 23.)

17
18 In other words, the parties must be free to lay
19 an information without first being required to
20 obtain consent to prosecute.

21 MR. POLLOCK: Would they be free to
22 withdraw it as well on the same basis?

23 MR. STRINGER: I don't think they
24 should be. This is another area that has been up
25 for contention. I feel if they are free to withdraw
26 it as well, then again it becomes a matter that is
27 withdrawn in the negotiation, the final settlement
28 of the dispute and if that is a result, then again,
29 it won't serve as a deterrent to the trade union people
30 involved who have been either taking part in, or

1 carrying on activities which are conducive to this
2 strike. No, I think once there is a charge laid it
3 is in the hands of the crown and must be proceeded
4 with by the crown.

5 MR. POLLOCK: Of course, there you
6 get the same pressure on the employer not to proceed
7 against the people once it has been settled and if
8 it is in the hands of the crown, the prosecution is
9 only in the hands of the crown: These witnesses'
10 words are still in the mouths of the employers.

11 MR. STRINGER: But I don't think, then,
12 that there is a great problem. It then becomes a
13 matter of the public prosecutor, the Attorney General
14 or the prosecuting attorney in the particular city
15 and I don't think that there will be any difficulty
16 then in getting the proper evidence.

17 THE COMMISSIONER: Well, that
18 prohibition applies to any proceeding for any act in
19 violation of the statute.

20 MR. STRINGER: Yes.

21 THE COMMISSIONER: Well, you make a
22 distinction between that prosecution and, for instance,
23 proceedings for an offence within the criminal code.

24 MR. STRINGER: I am sorry, sir, I
25 don't understand.

26 THE COMMISSIONER: This requirement,
27 is it limited to offences against the act?

28 MR. STRINGER: Yes, that is so.

29 THE COMMISSIONER: That would not prevent
30 you from proceeding with crimes.

1 MR. STRINGER: No, I agree, but, sir,
2 the area of crimes ---

3 THE COMMISSIONER: The only reason,
4 I suggest, is that this is before a summary convictions
5 court.

6 MR. STRINGER: Yes.

7 THE COMMISSIONER: In one sense I
8 suppose the crown may be looking upon it but it is
9 generally left to the individual prosecutor.

10 MR. STRINGER: Well, I think an
11 appointment should be made then. If the crown is
12 not going to prosecute, an appointment should be made,
13 the official appointment of the special prosecutor.
14 I know what has happened in instances where we have
15 obtained consent to prosecute, the company counsel
16 does the prosecuting and he does the prosecuting
17 without any official document from the Attorney
18 General appointing him special crown prosecutor.

19 MR. POLLOCK: He doesn't have to, by
20 virtue of the criminal code.

21 MR. STRINGER: Possibly something
22 should be done to confer some status upon him, which
23 is other than that of company counsel.

24 THE COMMISSIONER: Have you thought
25 of a public prosecutor who would be independent of
26 both parties, even of the government really?

27 MR. STRINGER: I think this is more
28 advisable, sir. But I don't see why a distinction
29 should be made between a breach of the Ontario Labour
30 Relations Act and a breach of the Highway Traffic Act.

1 If someone commits the offence they should be charged
2 and then have the matter dealt with in the proper
3 way by the court. But as long as there is this
4 atmosphere of the possibility of withdrawal being
5 at the whims of the parties, then it will never have
6 a sobering effect upon parties who have a tendency
7 to act in an unlawful manner.

8 MR. POLLOCK: Well, certainly the
9 experience in those areas where there is no necessity
10 for consent to prosecute, those areas where there has
11 been violence on the picket line or where the offence
12 amounts to watching and besetting under 366 of the
13 criminal code where you don't need any leave, there
14 has not been an experience of prosecution in that
15 area.

16 MR. STRINGER: There has been more
17 of an experience of prosecution in the area of
18 intimidation and of assault and this sort of thing
19 than watching and besetting under the criminal code.
20 Watching and besetting under the criminal code presents
21 too many difficulties, really. However, we have far
22 too many situations and especially, again, in a
23 construction agency where business agents of trade
24 unions openly advocate and support and authorize
25 unlawful strikes for one reason or another and they
26 do it quite wantonly. This three-step amendment that
27 I am suggesting, I really believe would do an awful
28 lot to curtail that type of irresponsible activity.

29 MR. POLLOCK: Well, I will leave this
30 until the next time.

1 (Mr. Stringer continues reading brief from "The
2 declaration that.." down to "..Supreme Court of Ontario."
3 on page 23.)

4 MR. POLLOCK: If you accepted that,
5 then you would do away with the application for
6 injunction, you would not need to use the courts
7 at all.

8 MR. STRINGER: You might not need to.
9 You may need injunctions - I think we have to consider
10 somewhat farther. No, you would still need
11 injunctions. For instance, you could still have
12 organizational picketing taking place where you would
13 need an injunction. The employer may have no dispute
14 with his employees, they may be working but some other
15 people may respect the picket line because of the
16 fines which can be levied upon them by their own union.
17 They may not be held to be engaging in an unlawful
18 strike for one reason or other and yet you might still
19 require an injunction in order to eliminate that
20 picketing so I don't think it necessarily eliminates
21 recourse to courts.

22 MR. POLLOCK: But it certainly eliminates
23 the type of thing we were talking about this morning,
24 where the strike is illegal.

25 MR. STRINGER: Yes, eliminates picketing
26 in support of an unlawful strike because it orders
27 the people to end it and get back to work. At the
28 present time this remedy of the declaration that a
29 strike is unlawful is nebulous. If we are going to
30 have remedies, let us have them really be remedies and

1 it does not seem to me to be untoward within the frame-
2 work of this legislation to have an order for people
3 who are striking unlawfully to honour their collective
4 agreement, honour their law and the commitment and
5 return to work. To me this does not seem far out at all.

6 THE COMMISSIONER: There is no
7 implication there that you can't be guilty of an
8 illegal strike before it has been declared so by the
9 Board?

10 MR. STRINGER: No, I don't think there
11 is, sir. As a matter of fact, I believe that the
12 courts in Smith and Jones held that just because the
13 Board declared an illegal strike didn't bind the court
14 so I would think the non-declaration would not bind
15 the courts either.

16 THE COMMISSIONER: Is it necessary,
17 before you can proceed on a penalty provided for by
18 the Labour Act?

19 MR. STRINGER: No, I don't think it
20 is necessary.

21 THE COMMISSIONER: Well, there is
22 no purpose in that.

23 MR. STRINGER: The declaration in
24 itself is almost meaningless. If it doesn't have the
25 effect of moral suasion, of immediately getting the
26 people back to work, it is just a meaningless piece
27 of paper.

28 MR. POLLOCK: I think the question is
29 in relation to - you don't have to take the two steps.
30 If you want to go directly to consent to prosecute, you

1 don't have to have them declare that it is a separate
2 proceeding.

3 MR. STRINGER: No, you don't have to,
4 so then you are in the position of only having one
5 ostensible remedy and that is the prosecution or
6 the consent to prosecute and what I say is that the
7 Act should have effectual remedies and to me it
8 does not seem extreme to ask for a declaration
9 compelling employees who are covered by a collective
10 agreement to honour their agreement and return to work.

11 MR. POLLOCK: When you say that it
12 ought to be mandatory, there still has to be the
13 discretion as to whether or not the strike is illegal
14 or not. Once having made that determination, you say
15 that they ought to then issue a cease and desist order.

16 MR. STRINGER: You use the words.

17 MR. POLLOCK: It still has to be a
18 discretion as to whether the strike is illegal or not.
19 I suggest that is not a matter of discretion; that is
20 a question of law.

21 MR. PAULIN: Of determination.

22 MR. STRINGER: Of determination, yes,
23 and once the board finds that the strike is unlawful,
24 then there must be an automatic declaration that it
25 is unlawful and that the employees must return to work.

26 (Mr. Stringer continues reading brief from "The Ontario
27 Labour..." down to "...an unlawful strike." page 23.)

28
29 In other words, the Act now makes that an offence but
30 that is all it says. "It is an offence and if you

1 want, you can apply for consent to prosecute", and I
2 say there must be this declaration as well.

3
4 (Mr. Stringer continues reading brief down to "...and
5 not discretionary." on page 24.)

6 THE COMMISSIONER: Why should there
7 be a declaration?

8 MR. STRINGER: The next step tells why.

9
10 (Mr. Stringer continues reading brief down to "...strikes
11 in Ontario." on page 24.)

12 In other words, if a business agent is found to have
13 called an unlawful strike, a declaration is then
14 issued by the Labour Board that he did, in fact,
15 counsel an unlawful strike, then it must also be
16 accompanied by an order that he is prohibited from
17 holding an office in the union for a period of not
18 less than five years.

19 MR. POLLOCK: I suppose you would also
20 say that if a company director or managing officer
21 filed a false income tax return on behalf of the
22 company, that he ought to be likewise prohibited, for
23 engaging in a combination under the Combines Investiga-
24 tion Act.

25 MR. STRINGER: I think you are trying
26 to extend the principle. I don't really know whether
27 he should or whether he shouldn't, Mr. Pollock, to be
28 honest with you. What I am talking about here is a
29 remedy to resolve a problem which I know exists in this
30 particular phase of our economic activity and I am

1 if
2 firmly of the opinion that/the amendments were
3 recommended by this Commission and adopted by way
4 of legislation that they would certainly effectively
5 curtail this kind of unlawful activity.

6 I don't really want to get into a
7 discussion of reciprocity in respect of other
8 legislation or other problems. Possibly the legislation
9 that exists in respect of company officers who file
10 untrue reports, maybe the legislation is sufficient
11 as it is to cover that situation. What I am saying
12 is that the legislation as it now exists is inadequate
13 to cover our existing industrial relations problems,
14 and that we need these amendments and I believe if
15 these amendments were incorporated, we would find a
16 drastic reduction in unlawful strikes.

17 THE COMMISSIONER: The officer is
18 already liable under the Act if he contributes to an
19 illegal strike.

20 MR. STRINGER: Yes, he is, sir, he
21 is liable for a fine but recently, in the papers, in
22 fact within the last couple of days, some officers
23 of a union, or members of a union in Oshawa, have
24 recently just been convicted. I forget what the fine
25 was - \$50 or something like that - but the unions
26 said, "We are appealing but in any event we will
27 pay their fines"; in other words, there is no
28 deterrent. I know, and especially in the building
29 trade unions, that when a man obtains a job as a
30 business agent, he is delighted. It means he gets
paid his wages and he doesn't have to do the work of

1 his trade, he is a business agent, he has got the
2 additional status, he has got the power commensurate
3 with it, it is a good job for him and if he stands
4 a chance of losing this job, if he calls an unlawful
5 strike, I think it is going to inject a certain
6 deterrent, a very strong deterrent in his activity
7 and cause him to act in a more responsible way and
8 then I won't have a business agent saying to me, when
9 I ask him "Are you respecting that unlawful picket
10 line?", say to me "We respect them all whether they
11 are lawful or not". I don't think they will do it,
12 sir.

13 MR. POLLOCK: Tell me, you have
14 collective agreements with most of these people,
15 have you?

16 MR. STRINGER: Yes.

17 MR. POLLOCK: How many times do you
18 proceed against the union for damages on these
19 collective agreements?

20 MR. STRINGER: Mr. Pollock, there is
21 a very grave difficulty in proceeding under the
22 collective agreement because under the collective
23 agreement you are limited again to recovering your
24 damages and your damages, not tortious damages but
25 only damages resulting from breach of contract, and
26 these damages are firstly, very difficult to prove
27 and, secondly, where you have had an unlawful strike
28 for a week or so, they may be relatively minimal if
29 you can get the work done; in other words, at what
30 stage do you even prove your damages? You may have to

1 wait until the construction project is completed before
2 you properly can assess your damages. It is again a
3 matter of practicalities and it is a very difficult
4 matter to establish these damages.

5 MR. POLLOCK: If you do not suffer
6 any damages, what is the problem?

7 MR STRINGER: Well, you can suffer
8 damages. If the activity is not brought to a halt,
9 then you will suffer damages. Also, there is a question
10 of your customers: In other words, let us assume
11 that Mr. Paulin's company is engaged in a construction
12 project and let us assume there is an unlawful strike
13 and he is stopped from producing or from building
14 that part of the plant for two months: He may have
15 a contract whereby he gets his contract price and he
16 is well protected. But assume he is building part
17 of the plant for the Steel Company of Canada and they
18 need this plant for their projected development and
19 they lose two months of service. This is the area.

20 MR. POLLOCK: Then they don't put a
21 penalty clause in the contract.

22 MR. STRINGER: Maybe there is no
23 penalty clause in the event of a strike or labour
24 dispute.

25 MR. PAULIN: As an employer I would
26 like to say it is the responsibility of many business
27 agents. I don't think it is our problem. I think
28 it is a deterrent to irresponsibility we are looking
29 for. We admit our labour problems are not caused
30 by responsible people but by irresponsible people, and

1 under our Labour Relations Act, any overt action by
2 any irresponsible person can cause a shut-down and
3 this is serious to our industry.

4 MR. POLLOCK: Well, if it is, you have
5 a remedy against them. You get at the sacrosanct trade
6 union funds which everybody seems to want to get at.

7 MR. STRINGER: Mr. Pollock, it still
8 comes down to the fact that you are dealing with
9 people, and I am not negating the possible effectiveness
10 of the right to sue the union and get at these union
11 funds. But that is not the whole story. You are
12 still dealing with the business agents, and we are also,
13 as Mr. Paulin has said, we are not saying all business
14 agents pull unlawful strikes. We are talking about
15 those who do. First of all, we are not really
16 interested in damages. What we are interested in
17 doing is going about our business. We are citizens
18 of the country. They are properly incorporated
19 companies. They exist lawfully. They have a right
20 to carry on their business. They should not be
21 thwarted in carrying on their business by unlawful
22 activity.

23 MR. POLLOCK: I say to you, though,
24 in answer to that, that once a business agent has,
25 by his action, rendered the union treasury liable to
26 some damages, I suggest to you that there may be some
27 consideration in reappointing him business agent again
28 or re-electing him, to operate the same way as a
29 statutory bar of five years, because there are all
30 types of unofficial arrangements that can be made with

1 people that are prohibited from occupying a particular
2 type of office. They can unofficially do something
3 and get some money somewhere else.

4 MR. PAULIN: The deterrent is rather
5 token, rather than being realistic at the present
6 time. That is what my thought is as an employer. We
7 have the machinery but we must make the punitive
8 action of such magnitude that it would deter an overt
9 action by an irresponsible person.

10 MR. POLLOCK: I don't know any deterrent
11 that will deter overt actions of an irresponsible
12 person, because if you read the criminal code, you see
13 all kinds of terrible deterrents there which don't
14 seem to have much affect.

15 MR. PAULIN: At least he is removed
16 from the element of authority where he should be. He
17 is not a responsible person and we are looking for
18 responsible representation both by management and by
19 union.

20 MR. POLLOCK: I suppose it is a
21 determination of in whose eyes he is responsible. As
22 far as the union is concerned, if he is putting
23 forth their position to the contractor, then he is
24 acting responsibly as a business agent.

25 MR. STRINGER: If it means calling an
26 unlawful strike -- that is not a responsible action
27 in law. We have to review the action against some
28 objective standard and the standard is the law.
29 Mr. Pollock, I am not saying that I do not agree with
30 the right to sue and to get at the union treasury.

1 What I am saying is that there is something better
2 and I think there is something more immediate and I
3 believe there is something more direct and what I feel
4 is even more direct -- and I am not advancing this
5 solution to the exclusion of what you suggest -- what
6 I am suggesting is this, in addition to what you
7 suggest, and I say that once a business agent is
8 found to have done what he is prohibited from doing
9 under the Labour Relations Act, he should be prohibited
10 from occupying that position, and I am just saying
11 that if that is done, debate it as we may, if that is
12 done, there will be a drastic reduction in business
13 agents counselling, procuring and supporting unlawful
14 strikes.

15 MR. POLLOCK: Do you know of any
16 action commenced under the collective agreement for
17 damages for unlawful action where a trade union has
18 counselled or procured or done these unlawful activities?

19 MR. STRINGER: I am not quite sure of
20 your question.

21 MR. POLLOCK: Do you know where anybody
22 has proceeded with the available remedy of seeking
23 damages from a union? There must have been all kinds
24 of cases where damages have been suffered and are
25 provable.

26 MR. STRINGER: There have been some
27 cases. There was a case in Hamilton within the last
28 year or so where damages were awarded against the
29 longshoremen's union. They have not been paid to date,
30 but they were awarded. There was a trucking industry

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1 case a few years ago where damages were awarded.

2 MR. POLLOCK: Why have they never
3 been paid?

4 MR. STRINGER: I don't know. I don't
5 act for the company or the union in that case, but
6 I do know that is the state of affairs. They have
7 not been paid to date. However, again, let me say
8 this: As counsel engaged on behalf of management
9 in these disputes, I know what management's pressing
10 desire is, and basically, we want to get the job going.
11 Whether it is in construction or general industry, it
12 is the company's desire to produce what it is engaged
13 in producing. It is not engaged in producing damages.
14 This is only compensatory and it is questionable as
15 to whether it is compensatory. It injures the industry.
16 For instance, the construction industry, if it continues
17 to have the type of wildcat strikes it has been having,
18 the type of refusal to work by plumbers, and this sort
19 of thing, then the whole reputation of the construction
20 industry falls into disrepute. Then possibly companies
21 themselves say, "To heck with getting a construction
22 firm. We are going to have our own construction firm".
23 This is if the company is big enough. Gentlemen, this
24 is a very real consideration today because large
25 companies can afford to do this. A smaller company
26 may not but a large company can. The basis of a
27 healthy construction company is the work awarded by
28 large companies.

29 MR. POLLOCK: I think that also applies
30 in the trucking industry.

1 MR. STRINGER: Very much so.

2 MR. POLLOCK: To say you are interested
3 in carrying on your business peacefully is to give
4 words to the obvious.

5 MR. STRINGER: But what we are talking
6 about is remedies. You are saying we will give you
7 possibly a remedy of damages. And we are saying ---

8 MR. POLLOCK: I am not saying damages
9 to compensate you. I am saying damages that will
10 act in some way as an encouragement for people to
11 act responsibly.

12 MR. STRINGER: All right, how do you
13 compute these damages?

14 MR. POLLOCK: However you compute them,
15 if you compute them \$10 thousand because we suffered
16 \$10 thousand worth of damages, then it has to come
17 from the fellow who has to pay the \$10 thousand. He
18 does not say, "Is that punitive damages or is that
19 compensatory damages or exemplary damages?", or whatever
20 you call it. He knows it cost him \$10 thousand and
21 that is punishment.

22 MR. PAULIN: May I ask a question that
23 is not facetious. How many industries have acquired
24 a fund, as recently reported in the paper, of \$65 million
25 for action that would cause a deterrent to the
26 productivity of the industry? There are not very many
27 of us have ever put aside a fund like that. It is a
28 very real problem. We are interested in continuing
29 in competition to produce. We must. It is the
30 life-blood of our industry. These interruptions are

1 absolutely detrimental to our future.

2 MR. POLLOCK: I would certainly not
3 quarrel with that. I would agree with that.

4 MR. STRINGER: What we are saying is
5 this: If we have the alternative, just talking
6 hypothetically, of having action to stop the unlawful
7 strike immediately, or forthwith, and action to
8 recover damages as a result of the unlawful strike,
9 we want to stop it.

10 MR. POLLOCK: There is no question
11 about that.

12 MR. STRINGER: And all I am saying,
13 with respect, is that I feel possibly these amendments
14 which we are proposing might serve more effectively
15 to prevent this activity. If it does not, then we
16 would have to rely upon the other remedy, that of
17 recovering damages suffered as a result of such
18 unlawful activity. But I feel we should not exclude
19 the one remedy because of the other.

20 MR. POLLOCK: The only exception is
21 that the one remedy you have now you do not use; that
22 is all.

23 THE COMMISSIONER: This is an
24 administrative matter. You speak of damages which have
25 been developed under a strict, legal system, so really,
26 you are in a position here where administrative action
27 is more effective. It is flexible and meets more
28 easily the basis of the complaint.

29 MR. STRINGER: That is it exactly, sir.
30 Mr. Pollock, you just said we had a remedy for damages

1 under the collective agreement and sometimes it is not
2 used: There are many situations where a trade union
3 or its officer calls or counsels or procures an
4 unlawful strike and there is no collective agreement.

5 MR. POLLOCK: My remarks were all
6 prefaced in those areas where you have a collective
7 agreement.

8 MR. STRINGER: I feel very firmly,
9 gentlemen, that these three points would go a long
10 way to deterring this type of unlawful activity.

11 Now, the last section in our brief
12 deals with a number of issues which I have just put
13 under the heading of "Miscellaneous". The first is
14 this:

15 (Mr. Stringer continues reading brief from "It is
16 submitted that..." down to "...an organizing campaign."
17 on page 24.)

18
19 MR. POLLOCK: But it does take into
20 consideration the anti-organizing tactics and the pre-
21 ssures placed upon employees by employers.

22 MR. STRINGER: I don't think it is that
23 realistic or that simple, Mr. Pollock.

24 MR. POLLOCK: You say it does not take
25 that into account?

26 MR. STRINGER: Not really, no. You talk
27 about pressure from employers. We have a system, to
28 begin with, which does provide for a secret ballot
29 representation vote if the union has between 45 and 55
30 per cent. If that is a valid system at all, that takes

1 into consideration this question of pressure you are
2 talking about and that situation is administered in
3 such a way as to ensure a free expression of the
4 employees' desires. In fact, if there was any
5 activity carried on, if there is a 72 hour silent period
6 in which the employer cannot do anything -- neither
7 party can propogandize, and also the Labour Board
8 looks very strictly at any employer activity which
9 is coercive upon the employees, and if it is found
10 that the employer has engaged in such activities,
11 there is provision under the Act whereby the vote can
12 either be done away with or not held or discounted and
13 automatic certification result.

14 MR. POLLOCK: You are not getting rid
15 of that? You are continuing that?

16 MR. STRINGER: No, I am not suggesting
17 we get rid of that. We are not advocating the right
18 for intimidation or coercion. We are against it from
19 either side.

20 MR. POLLOCK: Your submission is that
21 there should be a secret ballot vote in every applica-
22 tion for certification?

23 MR. STRINGER: That is correct, because
24 we are not suggesting that in every type of union
25 organizing campaign that intimidation is practiced by
26 the unions. However, very strong selling pressures
27 are applied by the union. Blue sky promises are made
28 by the union. Unions tell each employee they speak
29 to that, "Everybody else has joined, why don't you?",
30 unions tell many employees and particularly some of

our new Canadians that if they don't join the union they will be out of a job or they will be sent back to Europe. These are things which go on and you can't get evidence of this to adduce before the Labour Board but you know it does go on as a matter of fact.

Now, all we are saying is, let us have a free, proper secret ballot vote, free from intimidation or coercion of any nature and, with the greatest of respect, to me this does not seem like an unreasonable request.

MR. POLLOCK: Would you request a simple majority of those voting in the unit?

MR. PAULIN: I would qualify it as eligible to vote.

MR. POLLOCK: That is the way it is now I am asking it in a different way.

MR. STRINGER: For a secret ballot in every case I would be prepared to pay that price, I would be prepared to buy it at that expense.

THE COMMISSIONER: Has that been held by mail?

MR. STRINGER: I think it has been held by mail up north where they have been spread out. I don't know whether it was done in logging or not, I am not familiar with it, but I believe it has been done in some cases. I may be wrong. It is usually union elections that are held by mail. I don't think the Ontario Labour Board has ever conducted a secret ballot vote by mail.

(Mr. Stringer continued reading brief from "It is

1 submitted..." down to "...leftwing publications." on
2 page 25.)

3 THE COMMISSIONER: Well, of course,
4 you have to remember that there are some employers
5 who have almost a fanatical hatred of unions.

6 MR. STRINGER: Yes, sir, I believe
7 that their fanatical hate is their right. However,
8 it is the question of the manifestation of that hate.
9 If it is manifested by coercion and intimidation
10 and threats they must pay the penalty.

11 THE COMMISSIONER: Well, you say it
12 is a right. I would not call it a right. They are
13 free to speak and hold whatever opinions they choose
14 but it is certainly a stupid attitude to take in the
15 light of the twentieth century.

16 MR. STRINGER: It is possibly not
17 consistent with 1967 thinking.

18 THE COMMISSIONER: I would say if we
19 are looking for civilization that is going to get rid
20 of the obvious blemishes, obvious reversals to the
21 general, as they say, which is a fact, then we have
22 got to become reconciled to the realities of it.
23 We may not like some of these things, we may not like
24 political parties, we may not like anything like that,
25 but we are dominated by the prevailing view of the
26 majority.

27 MR. PAULIN: Mr. Commissioner, can
28 the word "hate" be construed as "debate". In other
29 words it is misconceived. The art of debate should
30 still be available to employees and it is often written

1 as "hate". It is not hate, it is a good fight-

2 THE COMMISSIONER: On the other hand
3 it is pretty hard to become deeply involved in emotions
4 and passions and maintain a rational outlook on
5 yourself.

6 MR. STRINGER: Sir, we cannot assume
7 that the only way to assume equitable wages and working
8 conditions for employees is through a union. We
9 can't assume that employers are not also interested
10 in creating good working conditions and proper wages
11 for their employees.

12 THE COMMISSIONER: I think the test
13 of that is what has it arisen out of. It arose out
14 of the outstanding and unassailable position of a
15 man with either ideas or property. Now, we know that
16 100 years ago the conditions of labour and employment
17 were disgraceful.

18 MR. STRINGER: Yes.

19 THE COMMISSIONER: To put it mildly,
20 there had been gradually a movement from that, getting
21 rid of the disgusting features that characterized
22 individual laissez faire.

23 MR. STRINGER: Everyone will recognize
24 that trade unions have played an important part in
25 bringing this about. Surely they are not the only
26 force that has been at play in bringing this about.

27 THE COMMISSIONER: No, I don't say
28 that, but all I would say is this, I don't know that
29 it has been suggested that presently in the minds of
30 anybody interested there has been any other scheme

1 except the joint action or cooperative action between
2 the organized workers and the organized employers.

3 It has come to that. What else is suggested?

4 MR. STRINGER: All I am saying is
5 that if a company feels that it can offer its employees
6 satisfactory working conditions, as good as or better
7 than other companies in its business or in its city,
8 that are under a union contract, if it feels it can
9 tell its employees what it plans to do for them, tell
10 them what it has done for them and say, "This is why
11 we feel you don't need a union", all I am saying is
12 the employer should be free to do so.

13 THE COMMISSIONER: That may be but
14 why does he take that position unless you admit - I
15 suppose you do - that he prefers to put reasonableness
16 into the relationship by himself?

17 MR. STRINGER: Yes, of course, sir.

18 THE COMMISSIONER: You know that can
19 be properly described as the residual of 100 years ago.

20 MR. STRINGER: I think it is a
21 collateral benefit that may accrue ---

22 THE COMMISSIONER: There are very few
23 who have reached this stage in which they can view
24 themselves in that way.

25 MR. STRINGER: But, sir, there are a
26 number of companies in that position. This is all
27 I am saying, they may be few.

28 MR. POLLOCK: Why does it seem that
29 they always wait until they are served with a notice
30 that there is an application for certification pending?

1 MR. STRINGER: Mr. Pollock, I would
2 not want to discuss certain companies by name at
3 this Hearing. I won't, but I certainly will tell
4 you that there are a number of companies - and I can
5 think of a couple of large companies in the City of
6 Hamilton - that do not wait for that, that have in
7 effect, outstanding benefits and treat their employees
8 in an outstanding manner and all I am saying is that
9 the right of these employers to speak to their employees
10 within the law must be preserved and what I am saying
11 is that the law as it stands now in section 48 is
12 too restrictive because it says that they can't even
13 tell the employees what they are prepared to do for
14 them because that is a promise and a promise is out-
15 lawed by section 48. We are not asking in any way
16 for the right of an employer to coerce or intimidate
17 his employees. We are completely against that and
18 we accept and support the law that prohibits that.
19 What we are saying, though, is that the law goes
20 farther and is too restrictive and it is a concept
21 that we can't accept, prohibiting an employer from
22 speaking to his employees and outlining his case to
23 them.

24 THE COMMISSIONER: I think a legitimate
25 criticism may be made against that of this nature -
26 that that sort of attitude is analogous to the working
27 up of the passions on a picket line. A picket line
28 can be self-restrained, it can be carried out within
29 the limits of strict legal rights, there is no doubt,
30 and on rare occasions it is. Similarly, in the other

1 case you may have and you do have exceptional relations,
2 but the tendency is against it. You may have it
3 with A, the father but you don't have it with B, the
4 son. For the first day you may have a legitimate
5 picket line, but the second day, when failure looms
6 on the horizon, you are going to have some change.

7 MR. STRINGER: Yes. In section 48,
8 part of it says:

9 "Nothing in this section shall be
10 deemed to deprive an employer of his
11 freedom to express his views so long
12 as he does not use coercion and
13 intimidation, threats, promises or
14 undue influence."

15 Now once you have got promises in there, I say what
16 is left?

17 MR. POLLOCK: Well, don't make
18 promises, give them the money.

19 MR. STRINGER: Don't make promises,
20 give them the money?

21 MR. POLLOCK: Yes.

22 MR. STRINGER: There are many, many
23 situations in which money is not the issue, many
24 situations.

25 MR. POLLOCK: Well, implement those
26 things, then. You are not restricted from implementing
27 them. You can change the working conditions.

28 MR. STRINGER: Rome was not built
29 in a day. It takes time to implement many things.
30 However, you have hit the nail on the head. All I am

1 saying is, give us the right to tell our employees
2 what we do, in fact, plan to do. Now, that is a
3 promise. If we don't deliver it, the employees will
4 say, "Okay, the company didn't deliver, we gave them
5 a chance, we are going to the union". All I am saying
6 is give us the right to make a plea to our employees.

7 MR. POLLOCK: But, by that time the
8 certification has been defeated.

9 MR. STRINGER: By that time it may
10 not even have been presented to the Board and if it
11 has been defeated they have every right in the world
12 to reapply.

13 MR. POLLOCK: Six months later.

14 MR. STRINGER: Not necessarily. You
15 are assuming it has been defeated by a vote. It may
16 be defeated because not enough employees ever went
17 after it in the first instance.

18 MR. POLLOCK: Normally, on these
19 organizational campaigns the first actual, positive
20 knowledge that there is one going on other than a
21 rumour, is the fact that a notice comes to the
22 employer saying that there is an application being
23 made in respect of his employees and that is when
24 it starts.

25 MR. STRINGER: That happens in many
26 cases but that is not the only situation.

27 MR. POLLOCK: In your free speech
28 position, if you want to make the promises before
29 any union comes in there, you can do that, there is
30 no quarrel with that.

MR. STRINGER: But why shouldn't you be able to make a promise when the union comes in there? What is wrong with it?

MR. POLLOCK: It is a question of motivation.

MR. STRINGER: Your motivation is having a union in to deal with. If you are willing to do things for your employees without the union coming in, what is this great panacea of a union? A union is only a means of obtaining proper working conditions for the employees.

MR. PAULIN: We have been in business for 54 years and I, as a second generation employer, sometimes question this present panacea of progress. I think the responsibility has to be borne by management and by union and I am not so sure that we are getting the correct teamwork.

MR. POLLOCK: I think probably the unions would agree with that and put the emphasis on another syllable.

MR. PAULIN: I am sure of that. That is one of our differentials.

(Mr. Stringer continues reading brief from "It is recommended ..." down to "...is no recourse." page 25.)

THE COMMISSIONER: I think you have to ask yourself why was the appeal prohibited in the first place.

MR. STRINGER: I believe the appeal was prohibited in the first place because of the fact

1 that an administrative tribunal is established to carry
2 out what is thought to be the legislative policy of
3 the government in power and as such, it administers
4 the act in any way that it feels the government wants
5 it administered.

6 THE COMMISSIONER: Do you think so?

7 MR. STRINGER: Yes, sir.

8 THE COMMISSIONER: Well, on the other
9 hand, it wants to set free a proper administration of
10 serious, social relations and it strikes me that one
11 reason is that if you leave it open to any manner of
12 appeal you are bound to get more appeals than should
13 be made. You are going to introduce the legal profession
14 into that and they are generally prone to raise questions
15 that may be technically well founded but which,
16 in substance, are more or less indifferent to the
17 reality of the relationship.

18 MR. STRINGER: Sir, in line with your
19 thinking, firstly, the legal profession is in it right
20 now, they are in it up to their necks; in other
21 words the procedure before the Labour Relations Board
22 has become very substantive, the Act itself has become
23 complicated and the legal profession is in it as it
24 is now. It couldn't be in it really any more.

25 THE COMMISSIONER: Of course it is but
26 it is not in it in a technical way.

27 MR. STRINGER: Well, sir, there are
28 many, if you read some of the judgments and decisions
29 issued by the Labour Board you will see some very,
30 very technical decisions issued by that Board; in other

1 words, technical problems are raised before that
2 Board every day, serious technical problems.
3 All I am saying is that if the Board makes a decision
4 that is wrong in law, why should it not be appealable?
5 You suggest there may be more appeals than there
6 should be. Are there necessarily more appeals
7 from our other court decision than there should be?
8 There is a cost involved in appeals and that serves
9 as a deterrent to a responsible appeal.

10 THE COMMISSIONER: But you are
11 appealing against men or groups of men which are not
12 fundamentally within the realm of strict legal rights.
13 But there is established a relationship which hasn't
14 qualities which the ordinary field of law doesn't know.
15 Even emotionalism; emotionalism is something that
16 really has to be taken into account.

17 MR. STRINGER: The question of
18 emotionalism would resolve itself really to a great
19 extent before the Labour Board on a finding of fact,
20 on the area of discretion, possibly in some areas.
21 What I am saying is, let us not make everything
22 appealable. We are not asking for an appeal on the
23 evidence.

24 THE COMMISSIONER: You ask for an
25 open door to the appeal.

26 MR. STRINGER: No, I said the right
27 of appeal from a decision which is wrong in law.

28 THE COMMISSIONER: Who is going to
29 determine that?

30 MR. STRINGER: Some things are questions

1 of interpretation of evidence and others questions of
2 fact and others questions of law.

3 THE COMMISSIONER: When it was a
4 question of law, as I recall, in the highest court,
5 it was purely based on a matter of evidence.

6 MR. STRINGER: This may be, sir, but
7 what we could say is, then, that we should not have
8 appeals from any of our courts because there could be
9 too many appeals which should not be taken.

10 THE COMMISSIONER: You might have a
11 legitimate appeal on a matter which reached into
12 the substance. You might have a dozen matters there
13 in matters of procedure or technicality which didn't
14 amount to any substance at all, and that is a case
15 where you should at least be required to get leave.

16 MR. STRINGER: Well, you can't even
17 get leave to appeal under the Act as it now is. It
18 is solely a matter of jurisdiction.

19 MR. POLLOCK: That is not so narrow
20 a field, though, is it?

21 MR. STRINGER: Yes, it is a field
22 that is narrow. It is a field that is becoming
23 increasingly narrow, as a matter of fact, and yet
24 it seems to vary. I have seen situations in which
25 judgments seemed to look for an area of jurisdiction,
26 and I have seen other judgments which completely
27 negate jurisdiction when it is staring it in the face.
28 So, this is the problem. I don't know how we can
29 defend a system whereby an administrative tribunal
30 acting as a quasi judicial tribunal can be permitted

1 to make errors in law from which there is no appeal.

2 THE COMMISSIONER: Can you give two
3 or three examples of errors in law which, because
4 of their lack of appealability, have really inflicted
5 onerous prejudices upon anyone?

6 MR. STRINGER: You talk about onerous
7 prejudice. What may be onerous to an employer who
8 may employ 12 people, may not be onerous generally
9 speaking.

10 THE COMMISSIONER: What is the status
11 of this thing?

12 MR. STRINGER: There may be questions
13 as to what evidence is admissible or not admissible.
14 There has been a question of law which eventually
15 was dealt with under the Labour Relations Act under
16 section 40 A where an application was made to quash,
17 but why should we always -- what we find ourselves
18 doing, really, is trying to frame an application for
19 certiorari to quash when really what we are trying
20 to do is have an error in law determined. This is
21 what has been happening.

22 THE COMMISSIONER: Take the matter
23 of evidence that you mentioned. In our ordinary
24 goings about and doings in life, we take all sorts
25 of relevant facts and hearsay to govern our judgment
26 but we waive them accordingly. Now, you are not before
27 a jury. You are before a legal board, a board of
28 men who are trained somewhat and they can disregard the
29 irrelevant or they can give a proper assessment
30 of those considerations that are really not too

1 dependable.

2 MR. STRINGER: Mr. Chairman, I have
3 the most profound respect for you, but I cannot accept
4 that. We have a three-man board at the Labour Board.
5 One man, the Chairman, is invariably a person who is
6 trained in the law; two people, an employer
7 representative and a union representative, have no
8 legal training. These three people are administering
9 this Ontario Labour Relations Act. We say they can
10 make an error in law from which there is no recourse
11 but a judge who is an eminent person trained in the
12 law can make an error from which there is appeal.
13 This is very difficult to accept.

14 MR. PAULIN: He is elected by his
15 peers too. Members of the judiciary are respected
16 by the layman.

17 THE COMMISSIONER: If you could suggest
18 some of these points that really go to the substance
19 of your prejudice, it would be more effective.

20 MR. PAULIN: I believe most laymen
21 believe that the judiciary is the finest vehicle
22 we have in the process of law, and therefore, it
23 should be reserved to judges and not put in the
24 hands of another body.

25 THE COMMISSIONER: But I think you
26 would be one of the last to say that every violation
27 of a technical rule ought to go to a court of appeal.

28 MR. PAULIN: We don't mind that when
29 there is recourse, but there is no recourse here.

30 MR. POLLOCK: Let me stop you there.

1 Perhaps Mr. Stinger could assemble some of the cases
2 in his off moments and amplify this third submission.

3 MR. STRINGER: I might be able to, sir.
4 However, I think I should point out that one of the
5 difficulties in providing this information at this
6 stage is the fact that we have ceased to look for
7 errors of law in the Board's decisions. If you cannot
8 find something that goes to the jurisdiction, you
9 don't bother looking for an error in law because
10 you have no appeal.

11 MR. POLLOCK: What about the ones
12 that are not tortious in a certiorari application?

13 MR. STRINGER: Well, those are the
14 ones.

15 THE COMMISSIONER: But you seem to be
16 very busy on matters of substance.

17 MR. STRINGER: I think we should be.

18 THE COMMISSIONER: I think you are.

19 MR. STRINGER: Now, the fourth point:
20 (Mr. Stringer continues reading brief from "As stated
21 earlier..." down to "...the arbitration scene.", on
22 page 26.)

23 MR. POLLOCK: What is it in these
24 particular judges that makes them so acceptable?

25 MR. STRINGER: First of all, they
26 are judges and they are able to view matters very
27 objectively, first of all by their training and by
28 their position of independence they are most free from
29 outside pressures, they are most trained to sit as
30

1 arbitrators because again, we cannot look at a
2 collective agreement as something that should be
3 interpreted by the chancellor's foot. It is a legal
4 document today which has been interpreted legally.

5 MR. POLLOCK: Now, when a judge,
6 unlike other jurisdictions in Europe where judges
7 are trained to be judges; judges here are appointed
8 from the legal profession after having ten years',
9 or whatever it is, qualification and they are
10 elevated to the bench. Now, instead of elevating
11 him to the bench, why can't we take the same people
12 with the same qualifications and elevate them to the
13 arbitration tribunal?

14 MR. STRINGER: There is no reason
15 why you can't.

16 MR. POLLOCK: There is nothing in
17 here about the fact they are a county court judge.
18 It is a matter of the quality of the individual.

19 MR. STRINGER: That is it exactly,
20 the quality of the individual to do that job. An
21 interesting thing about this whole amendment is that
22 originally we heard many outbursts from trade unions -
23 this is several years ago - against judges sitting
24 as arbitrators, and I think we must mark the wide
25 acceptance of judges as arbitrators by trade unions
26 as well as by management. They have come to rely
27 upon them and support them and I know when I speak
28 to trade union people and we are dealing with an
29 arbitration and we are talking about a chairman and
30 wondering who we are going to appoint, and they are

1 as unhappy as we are that we have lost the services
2 of these judges.

3 THE COMMISSIONER: You really have not.
4 Isn't it a question of provincial remuneration?

5 MR. STRINGER: It is a question of
6 some remuneration, yes, I believe it is. But for
7 all practical purposes, as it stands now, we have
8 lost the services of them.

9 THE COMMISSIONER: I don't think you
10 can say that men with an awareness of what they are
11 doing, an awareness of their duty, with some
12 objectivity of outlook where they can view matters
13 from any point of view, I don't think you have
14 exhausted those men by the appointees to the courts.

15 MR. STRINGER: You say you don't think
16 we have exhausted those men. We are having a
17 terrible time finding them. //

18 THE COMMISSIONER: Perhaps you are
19 looking in the wrong places.

20 MR. STRINGER: Maybe so, sir. However,
21 I don't think we should be looking, with the greatest
22 of respect, to professors of sociology and people
23 who are untrained in law and untrained in the
24 interpretation of a contract because that is what
25 a collective agreement is.

26 THE COMMISSIONER: I can see that.
27 That is so. But, you have got to have an all-round
28 trained man. He has got to know something more than
29 the primary assumptions of a legal system.

30 MR. STRINGER: Then, let us say, sir,

1 that he must have the training of the legal system
2 and he must, as you say, have something more. All
3 I am saying is that perhaps with the odd exception
4 the most eminent arbitrators in Ontario have been
5 the body of county court judges -- there may be 10
6 or 12 or 15 of them -- who have been doing so much
7 of this work. These are men who have assimilated the
8 approach, who are now aware of the extra legal
9 considerations as well as the legal considerations.
10 They are the men who have added a great stability
11 and respectability to arbitration of collective
12 agreements. Now we are throwing them out. This
13 is wrong. We have nothing waiting in the wings to
14 replace them.

15 THE COMMISSIONER: It does not
16 disqualify them from sitting.

17 MR. STRINGER: As a practical measure,
18 sir, it does, because why should they work as hard
19 as they have been working without remuneration. They
20 won't do it.

21 THE COMMISSIONER: It is not a
22 question of working without. It is a question of
23 working for a sum from the resources of the province.

24 MR. STRINGER: Well, then, sir, I
25 would have thought -- as it stands now we are deprived
26 of their services. If we were not going to be
27 deprived of their services, surely there could have
28 been something worked out between the federal and
29 the provincial governments whereby, happening at the
30 same time as the amendment to the Judges Act federally,

1 there was some amendment to the Judges Act provincially
2 to provide for that extra compensation, but this was
3 not done. A vacuum has been left.

4 THE COMMISSIONER: They may make some
5 arrangement but I would not accept it that you cannot
6 find in the Province of Ontario, men suitable for
7 this purpose. They may need a certain introduction
8 of training, and you might be able to step right
9 back into the university to teach people to look at
10 things from every point of view. That is the
11 essentail requirement.

12 MR. STRINGER: Sir, I don't believe
13 these men you are talking about have the independence
14 of action that a judge has in order to be able to
15 look at these things.

16 THE COMMISSIONER: You can put them
17 in that position just as easily as you can appoint
18 a judge.

19 MR. PAULIN: Mr. Commissioner, he
20 became a judge because of exposure to the business
21 world and selectivity by his peers. This cannot be
22 done in university. It must be done on an approach
23 to business matters, and therefore, he is capable,
24 in my mind, to adjudicate the situation impartially.
25 The appointment of a judge, through the system, he
26 sits in the chair and he is adjudicating two people
27 who are in conflict. I would rather have him than
28 anyone else I can think of.

29 MR. POLLOCK: I don't think that
30 strengthens the argument of the objectivity in this

1 case.

2 MR. STRINGER: No, but the fact that
3 he is just as acceptable to the trade union movement
4 as he is to Mr. Paulin does strengthen his objectivity
5 and his strength.

6 THE COMMISSIONER: Don't construe
7 this into an argument against the resort to members
8 of the judiciary.

9 MR. STRINGER: No, sir, I am not. I
10 am just saying that we have cast out this body of
11 men who have made a great contribution and who are
12 able to, without finding some way of getting them
13 back in or without having some other group to replace
14 them, and if, sir, you speak to the people --

15 THE COMMISSIONER: I quite appreciate
16 that. If they decline to act now, that is quite
17 true and you will have to look about, at least the
18 province will, to produce a new class.

19 MR. STRINGER: They should have looked
20 about before this happened because now we are going
21 to find,-- and we have a shortage of qualified
22 arbitrators -- we are going to find these cases
23 piling up. I am being told now by people who, before
24 you could get like that because they weren't judges
25 and they were being overlooked, I am now finding these
26 people telling me we can't get them for three months.
27 This is not conducive to a proper arbitration system
28 within our collective agreements.

29 THE COMMISSIONER: Well, it is almost
30 beyond the bounds of our inquiry to assail the

1 government.

2 MR. STRINGER: Not to assail, but
3 certainly to make a recommendation - not to assail
4 in any event.

5 I don't think I will read the rest
6 of that because I think I have said it.

7 (Mr. Stringer reads brief from "At a time when..."
8 down to "...and of being sued." on page 27.)
9

10 Now, unless either you, Mr. Commissioner, or you,
11 Mr. Pollock, have any questions, that is our
12 presentation.

13 MR. POLLOCK: I assume, just on the
14 last point, that the basis of liability would be
15 similar to the ones that have been established under
16 the Polymer principle where you have to show that
17 there is some relation of the union, of the union
18 hierarchy, to the activity or at least no attempt made
19 by the union to do ^{everything} within its power to prevent
20 unsanctioned activity from occurring.

21 MR. STRINGER: I think we have to
22 be very careful of this really, because there has
23 been to some extent - I won't say a modification of
24 Polymer, but maybe a further application of it.
25 However, one of the great problems that I find in
26 the Polymer decision is that it becomes very easy
27 again for a union to wiggle out by activity whereby
28 an unlawful strike is counselled in secret and the
29 men are told themselves what to do, but the union
30 business agent, because of the implications of Polymer,

*Nethercut & Young**Toronto, Ontario*

1 must appear and must say, "Men, go back to work. " It
2 is your duty to go back to work".

3 MR. POLLOCK: "And if you don't go
4 back to work, I am going to punish you or suspend you".

5 MR. STRINGER: So he ostensibly does
6 everything he is obligated to do in order to relieve
7 his union of responsibility but behind the scene ---
8 because it is such an extreme difficulty in proof,
9 I think we have to recognize it exists.

10 THE COMMISSIONER: If his action
11 becomes a regularized right, a bit of ceremonial,
12 why of course it would lead to the implication that
13 he is not honest.

14 MR. STRINGER: You see, very often,
15 sir, it is very rarely that a union does impose fines
16 upon its members for wildcat strikes.

17 THE COMMISSIONER: The absence of it
18 might be evidence against them depending upon the
19 total circumstances.

20 MR. STRINGER: Yes.

21 THE COMMISSIONER: Well, Mr. Stringer
22 and Mr. Paulin, we are very much obliged to you for
23 a very open and free discussion.

24 MR. PAULIN: Thank you, Mr. Commissioner.
25 On behalf of the Hamilton Construction Association,
26 we do appreciate you giving us the audience today and
27 we hope it has added some measure of strength to the
28 argument that may be in favour of some revision to
29 our Labour Relations Act.

30 MR. POLLOCK: Much obliged.

1 MR. STRINGER: And on my part, thank
2 you very much, Mr. Commissioner and Mr. Pollock.

3 THE COMMISSIONER: We will take a
4 short, and I mean short, recess.

5
6 ---Short recess.

7 MR. POLLOCK: The Southern Ontario
8 Port Council, William Menard, President. Gentlemen,
9 will you come forward with as many of your people
10 as you wish to have at the table?

11 MR. MENARD: Good-afternoon, Mr.
12 Commissioner. Good-afternoon, Mr. Pollock. I would
13 like to introduce the members of our delegation. I
14 think you will probably want them introduced in the
15 order in which they are seated.

16 MR. POLLOCK: If you could.

17 MR. MENARD: On your left, Mr. Angus
18 Cameron, Business Agent of the Seafarers' International
19 Union. Mr. Doucette, Member of the ~~Ironworkers~~
20 Local 721.

21 MR. DOUCETTE: My name is Doucette,
22 I am the Recording Secretary.

23 I am sorry, I will give you copies of
24 the brief. The copies you have are probably not
25 adequate in the names here.

26 On my left is Mr. Alex Murray, the
27 custodian of our funds in the Port Council, the
28 Secretary-Treasurer, and on my extreme left, Mr. Springer
29 of the International Brotherhoods of Teamsters' Local
30 938, one of our affiliated organizations.

1 If we could, Mr. Commissioner, I would
2 like to generalize for a couple of minutes on what
3 we hope to accomplish by our appearance here today.

4 I would say that we have admiration for
5 the style in which counsel for the Hamilton Construction
6 Association presented their submission here today.
7 Unfortunately, we have not the ability to make a
8 presentation of that style. We have no lawyer here.
9 We all work for a living. We had no lawyer present
10 when this submission was being drawn and we hope in
11 the submission, to convey the mood that exists among
12 the members of our affiliated organizations rather
13 than to rehash or resubmit some of the arguments that
14 were very capably, we felt, put by the Ontario
15 Federation of Labour and others who have appeared
16 before this Commission.

17 We are taking the general approach
18 outlining the thinking that is current among our
19 members and I think perhaps we hope that the Commissioner
20 will have judged that if there is going to be further
21 restrictive legislation recommended after these
22 Hearings are concluded that we are going to fight
23 exceedingly hard against this. We feel, we have to
24 feel that trade unions are not only beneficial, not
25 only should be tolerated in society, but from our
26 point of view, that they are absolutely essential
27 and we feel that in defence of this feeling that the
28 trade union movement, by its efforts, particularly
29 since the organization of the C.I.O., the mass
30 industrial unions has been the salvation of the economy

1 of North America and we submit, I think, a new
2 argument in that regard.

3 I don't know of any other trade union
4 organization that has put this economic argument and
5 we don't do it elaborately because, to be very frank
6 with the Commissioner and with you, Mr. Pollock, we
7 hope for the very best from this Commission and we
8 bear in mind that Mr. Rand's name is attached to some
9 legislation in the trade union field that has been
10 of benefit for two decades now.

11 While we hope for the very best, I
12 must say that if the reports in the press are any
13 indication, we expect the worst.

14 THE COMMISSIONER: What do you base
15 that on?

16 MR. DOUCETTE: I had just said, Mr.
17 Commissioner, on the reports that the press has carried.

18 THE COMMISSIONER: Well, I may say
19 to you, Mr. Doucette, that at the beginning it was
20 stated that we were to have an absolutely free exchange
21 of ideas. It didn't make any difference from whom
22 they came or what they were, so that we would know
23 the whole field of relevant ideas that can be
24 associated with these important questions. So you
25 need no worry about any preconceptions or any
26 settled opinions one way or the other.

27 MR. DOUCETTE: Well, Mr. Commissioner,
28 we are pleased that we are addressing you and not
29 somebody else, perhaps, because you, after all, have
30 had for many years, a great deal of respect in the

1 labour movement. It is not the Rand Commission, as
2 we refer to this inquiry, that we are worried about
3 so much. We feel that at least a dozen submissions
4 have been made to the government of this province
5 in recent years, the annual submissions of the O.F. of
6 L., the select hearings of a few years back in 1958
7 and 1959, that the complaints of the labour movement,
8 the wrongs that we were seeking redress from in those
9 times were not even brought to the Royal Commission
10 stage until the development of the Oshawa Times and
11 Tilco Plastic strikes of a year ago, and we don't feel
12 that the Conservative government of Ontario has
13 shown any evidence of its good faith in resolving
14 the problems of the labour movement.

15 You see, again being frank and picking
16 the clothing off the argument, we submit in this
17 document that perhaps the reason this Commission was
18 set up - there is a strong suspicion in the labour
19 movement that the government of Ontario set up this
20 Commission in order to keep this injunction act under
21 control until after the provincial elections that are
22 in the offing.

23 THE COMMISSIONER: I don't want you to
24 associate that with me.

25 MR. DOUCETTE: We don't, sir.

26 THE COMMISSIONER: Because I know
27 nothing about that and I would not tolerate it in
28 any sense at all. We are here to inquire into the
29 matters set forth in the order in council setting this
30 Commission up and nothing else.

1 MR. DOUCETTE: Of course. In making
2 these opening remarks, I wanted to assure the
3 Commissioner that we do not associate you with the
4 plan of the Ontario government. Nonetheless, the
5 Commission was set up after the demonstrations in
6 Oshawa and in Peterborough and we feel that the
7 Commission would not even have been established at
8 this point had those demonstrations not taken place.

9 THE COMMISSIONER: That may be, but
10 that is simply acting upon what appears to be strong
11 public feeling one way or the other. It may be both
12 ways. I don't think that we are helping things by
13 making guesses of that sort. What we are anxious
14 to find out and what I am anxious to find out are the
15 realities of the relations of the utmost importance
16 to what we look upon now as the most important of
17 the matters of our lives, that is the economic. We
18 have given ourselves over pretty much to that and
19 that is the inquiry here----What are ^{the} realities really
20 where we have to work? We have unions to act for the men
21 and we need a certain leadership in the form of management.
22 Now, are the present relations so governed as to
23 produce the best results to the total community? If
24 they are not, what changes can be made and what are
25 the considerations for those changes if there are to
26 be any?

27 MR. DOUCETTE: The reason I made those
28 remarks was to try to complete the picture of the
29 mood that exists in the trade union movement today,
30 as a sort of a preliminary to the submission which we

1 make. This submission, Mr. Commissioner, is a
2 generalization rather than specific, except in one
3 or two aspects. If we could, we have been here since
4 just before noon ---

5 THE COMMISSIONER: You can stay as
6 long as you please.

7 MR. DOUCETTE: I wanted to know how
8 much time we had.

9 THE COMMISSIONER: Don't worry. We
10 are here to listen to you.

11 MR. DOUCETTE: Thank you. The first
12 three pages of this submission, Mr. Chairman, in the
13 marketplace would likely be described as puffery.
14 We want to introduce the Port Council to people who
15 don't know what the Port Council is all about and
16 besides this Commission, of course, the brief will
17 likely be circulated around our affiliated organizations
18 and to other unions that are not. So, you will
19 perhaps be understanding if we brag a little bit about
20 ourselves in here.

21 THE COMMISSIONER: What is the
22 significance of the word "Port" in the title?

23 MR. DOUCETTE: I think it will come
24 out, sir, in the first two pages.

25 (Mr. Coucette commences reading the brief from "Our
26 Council functions ..." down to "...which we produce."
27 on page 3.)

28
29 If you wish, Mr. Commissioner, we
30 could discuss the matters as they are read.

1 THE COMMISSIONER: You just take your
2 own course.

3 MR. DOUCETTE: Well, from watching
4 the previous proceedings I gather you reserve the right
5 to interrupt and ask questions and that will be fine
6 with us.

7
8 (Mr. Doucette continues reading brief from "WE CALL
9 FOR THE ABOLITION OF COURT INNUNCTIONS IN LABOUR
10 DISPUTES".)

11 In this section, we take the position
12 that management has made its own demands clear. We
13 consider ourselves as counsel for the defence and we
14 try to put the case for the defence of the trade
15 unions without perhaps trying to present a rounded-out
16 case and saying that we can see part of the company's
17 side of it and so on. This is purely a one-sided
18 submission.

19 (Mr. Doucette continues reading brief from "As active
20 participants.." on page 3, down to "...it an equal
21 struggle." on page 4.)

22
23 MR. POLLOCK: You have missed something
24 out. Was that intentional?

25 MR. DOUCETTE: It is in the typed
26 copy but not in the Gsstetner copy. I think the girl
27 must have missed it out.

28 MR. POLLOCK: The typed copy is the
29 correct quotation, is it?

30 MR. DOUCETTE: Yes, I am sorry, I did

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1 not proof-read this because we were in a rush and I
2 did not notice it had been omitted in this copy.

3 Could you read that, Mr. Pollock?

4 MR. POLLOCK: "An injunction to stop
5 a riot is unnecessary. The police have to keep the
6 peace anyway."

7 (Mr. Doucette continues reading brief from "Both
8 sides should..." down to "...for the sake of justice."
9 on page 4.)

10 MR. POLLOCK: Wasn't it the same
11 Mr. Golden who recently applied and obtained an
12 Construction
13 injunction to restrain the Toronto/Association from
14 attempting to persuade members of the other association
15 of construction employers to assist them in the dispute
16 with their construction employees?

17 MR. DOUCETTE: That was the same Mr.
18 Golden; he was acting in that instance for the Iron-
19 workers' Union, local 721, and the reason that verdict
20 was given such prominence was that I think it was
21 the first instance where a trade union had won in an
22 application for an injunction against an employer.
23 They are not very common.

24 MR. POLLOCK: It is a very dangerous
25 proposition of law which says you can't ask others,
26 even by letters, to assist you. If you can't persuade
27 them by means of a letter then you certainly ought
28 not to be able to persuade them by means of picketing.
29 This seems to be an inconsistent principle. I hope
30 that the trade union movement is taking cognizance
of that technique.

1 MR. DOUCETTE: You see, what we would
2 like to have and what we have are not at this moment
3 too closely related. We don't like the injunctions
4 because the injunctions have been injurious and have
5 caused a great deal of harm to the labour movement
6 which we can perhaps elaborate on and give instances
7 of later on in our submission. But the fact the
8 labour movement applied for the one injunction and
9 that injunction was granted in a very extreme instance,
10 I don't think proves a great deal. It proves that
11 you can, if you are lucky, get an injunction against
12 an employer. We felt we were very fortunate there.

13 MR. POLLOCK: Probably I am not
14 making myself clear. It is the principle on which
15 the injunction was granted which says you shall not
16 interfere with other people by writing to them and
17 saying, "Do not hire these other employees". The
18 concomitant of that is that the trade union people
19 ought not to try and persuade non-members of the unit
20 to go and work in this place.

21 MR. DOUCETTE: I think counsel for
22 the contractors made that point clear, that the
23 employers would like to have that incorporated into
24 the laws of the province and, of course, we would like
25 to have a lot of things incorporated into the laws
26 of the province which would astound the spokesmen
27 for management and the owners of industry. The
28 difference is that we are confident that one day
29 we are going to get them.

30 MR. POLLOCK: The only point I am making

1 here and then I will leave it, is that I think the
2 basis of this decision recently obtained is going
3 to come back and haunt the trade union movement much
4 more than it is going to have any great affect on
5 the Toronto Construction Association.

6 MR. DOUCETTE: It may well do so.

7
8 (Mr. Doucette continues reading the brief from "We
9 fervently..." down to "...discriminatory device" page 5.)

10 MR. POLLOCK: I suppose that attitude
11 goes for all kinds of illegal activity. You don't coun-
12 tenance illegal activity, do you?

13 MR. DOUCETTE: I suppose this attitude
14 goes for all types of illegal activity: I would assume
15 the police would prohibit, and we feel if you were
16 walking down the street and I molested you or attacked
17 you and so on, you don't have to get an injunction
18 to have the police protect you from me.

19 MR. POLLOCK: No, the point I make
20 is that you say the Southern Ontario Port Council
21 does not specifically counsel mass defiance of
22 injunctions and that you would deprecate that type
23 of conduct. I say, in addition to that I assume
24 that it is inherent in that position that you also
25 would equally be against any kind of violence in a
26 labour dispute or illegal activity which may occur.

27 MR. DOUCETTE: We don't say we would
28 deprecate mass defiance of injunctions. We say
29 we would not experience pleasure. We would like to
30 see injunctions removed from the labour scene and
we would like to see a sunny weekend, but we have

1 doubts we are going to have one. You see, we would
2 like to think there is some other process open, such
3 as this Commission, which will bring us to a state
4 of affairs in this province where there are no
5 injunctions in labour disputes. The reason we come
6 to this Commission to convey the mood of the membership
7 of our affiliated unions is in the hope that this
8 Commission may be able to influence the government
9 of Ontario to cease and desist the practice of issuing
10 injunctions in labour disputes. Now, we say we
11 have very grave doubts whether injunctions are going
12 to disappear by that route.

13 THE COMMISSIONER; Take the case
14 of a large industry in Hamilton: There was a strike
15 declared, it was accepted but there was a condition
16 concerning the coke ovens which had to be emptied or
17 otherwise it would entail the loss of something
18 over \$1 million. The strikers at the gates refused
19 to allow anybody in there to attend to that, and
20 they got out an injunction and in that way they
21 saved the loss of \$1 million. What would you say
22 in that situation, that they call upon a policeman?

23 MR. DOUCETTE: Well, we are striving,
24 Mr. Commissioner, to see management's problems, to
25 see that they had a \$1 million problem with the coke
26 oven. But you see, we have many problems that nobody
27 looks at at all.

28 THE COMMISSIONER: But let us consider,
29 first of all, that. When you argue against injunctions
30 I think you should make a distinction between injunction

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1 given in one situation and injunctions given in
2 another. I will agree there is no sense in running
3 for an injunction when you have an adequate police
4 force that will maintain law and order. But, in a
5 case of this sort, which you sometimes meet -- not
6 often but you do sometimes -- what would you do if
7 you were in charge of that labour organization which
8 was defying every effort to save something that they
9 wanted to go back to? //

10 MR. DOUCETTE: We built that oven,
11 Mr. Commissioner and it represents wealth that we
12 built, but the wealth is not ours. It belongs to
13 the Steel Company and we had made demands upon that
14 company. If they cannot comply with them, we are
15 in the unfortunate position of saying that we
16 have some sympathy, but we have more sympathy for
17 the plight that we are in because we have to take
18 this drastic step of going on strike in the first
19 place and I am not that enamoured, you see, of the
20 property rights that management has when I consider
21 how those rights are used against us.

22 THE COMMISSIONER: Surely you don't
23 reach the point which seems to follow from what you
24 say, that in order to obtain the satisfaction of spite,
25 you would destroy that coke oven?

26 MR. DOUCETTE: We did not go out on
27 the street for spite.

28 THE COMMISSIONER: I want to be frank
29 and I want you to be frank. I want to know what your
30 position would have been had you been in charge of that

gate?

MR. DOUCETTE: I would have to know a great deal more.

THE COMMISSIONER: Well, there is not much to learn. All they did was get an injunction which permitted them to go in and take that stuff out in order to preserve the oven. That is all that was involved in it -- no other dispute of any sort.

MR. DOUCETTE: We have learned in many cases, Mr. Commissioner, that when you are flexible and prepared to give that you sometimes give the opening that costs you the strike, and my experience over a quarter of a century of striking and arguments and battles with the boss and so on, is that in no circumstances would I give unless I had to give and unless I was firmly convinced it was in the common interest, in the public interest to give. And since we are a part of the public it would have to be in our interest in the main.

Now, other members of the delegation here might have a different attitude and perhaps if I were in Hamilton at that time and knew all of the circumstances we might have taken a different approach.

THE COMMISSIONER: I think the majority of the men representing labour before this Committee have said this, "Of course we will preserve that plant. We look to go back to that plant to earn our livelihood, it is part of ours." That is exactly what you started out with and you are going to destroy your own and your company's and the public's interest not for any

1 purpose at all except spite.

2 MR. DOUCETTE: I don't know the
3 circumstances there. For instance, it was a legal
4 strike and I don't imagine a legal strike starts in
5 this province on 24-hour's notice; it is usually
6 known some time before. If the administrators, if
7 management had not the foresight to close their oven
8 down progressively as should be done in a situation
9 like that, then I don't know that they should look
10 to the labour segment to solve their problem.

11 THE COMMISSIONER: They only asked
12 the labour union to stop violating the law to prevent
13 entrance to that plant.

14 MR. DOUCETTE: I don't know why that
15 decision was taken. I would be sufficiently curious,
16 though, to telephone to Hamilton to some of the people
17 I know and ask them what was the basis.

18 THE COMMISSIONER: I am stating to you
19 what was stated here and if it is an error in fact,
20 that is not my fault. I took it to be the fact.
21 All I say is that you have as much interest in the
22 maintenance of that plant as the company has in its
23 maintenance. You look to return to it. When you
24 strike you don't leave your employment at all: You
25 maintain the idea "I am going back there, we will
26 settle this some way and I am going back there". To
27 what? To a destroyed work? To a ruined shop?

28 MR. DOUCETTE: We like to think we
29 have an investment in those plants and in those
30 industries but in reality we have none except the

1 investment we are able to make every day. Very little
2 of this goes back to us. You see, the attitude that
3 we take is that we are not the partners in industry;
4 we are an essential ingredient to industry but we
5 are not partners in any sense.

6 THE COMMISSIONER: Then why don't you
7 take a view that may justify your claim to be social
8 partners in that, to be partners in a social sense.
9 You are not partners legally, that is the truth, but
10 are you so closely associated in the social function
11 as to be able to say, "We are related to that industry"
12 and, as a matter of fact, the statute under which you
13 act in this province preserves your relation to that
14 plant notwithstanding you are on strike.

15 MR. DOUCETTE: I have no doubt that
16 in the last number of years the labour movement made
17 tactical errors in strike situations. I know I have
18 made a few myself but I don't think that it serves
19 the purpose here to bring that incident out because,
20 you see, that would be an unusual instance.

21 THE COMMISSIONER: All that was brought
22 forth was this: You are arguing for the total
23 abolition of an injunction. Here is a situation
24 where action must be taken immediately. There is
25 no room for discussion or controversy; you have got
26 to act before the loss is suffered. Now, there is
27 a situation where the quickest method is, let us
28 assume, the injunction. The injunction doesn't do
29 anything at all but enable the company to save that
30 piece of property.

1 MR. DOUCETTE: I would think that the
2 law must provide other remedies except an injunction
3 in a dispute of that sort. I am sure that knowing
4 the ingenuity of the companies, they could have taken
5 all sorts of steps. They could have used the
6 helicopters which they used up in Sudbury, and they
7 could have used the police which they have used in
8 every town in the province to get in there to shut
9 down the coke oven.

10 THE COMMISSIONER: Do you really go
11 under the assumption that by picketing you are entitled
12 to prevent physically, entrance to a piece of property?

13 MR. DOUCETTE: We are going to say
14 something about that later on.

15 THE COMMISSIONER: I wish you would
16 answer that because it seems to me if you do, you have
17 a misconception. It may be in the future that you
18 will be partners but when you are speaking about
19 present law, you have got to acknowledge the existence
20 of what actually does exist. You might go beyond that
21 and I will ask you: Do you believe in private ownership
22 of property? Do you believe that you are entitled
23 to own a home of your own, to keep all trespassers
24 off it and to call upon the police forces to enforce
25 your right?

26 MR. DOUCETTE: Yes, we believe that
27 every man should be entitled to own his home even
28 though we appreciate that many of us never will own
29 a home under the present set of conditions. We believe
30 that industries ought to be commonly owned where they

1 are not used to the communal advantage of everybody
2 in society.

3 THE COMMISSIONER: What do you mean
4 by that?

5 MR. DOUCETTE: Well, for instance,
6 in the case of Canadian Pacific Railway that was
7 mentioned here briefly and the strike at the Royal
8 York Hotel, Canadian Pacific Railway enjoys a great
9 deal of privilege in this country. It goes away back,
10 I guess to the time of confederation when the C.P.R.
11 was first built.

12 THE COMMISSIONER: It was not quite
13 as early as that but not long after.

14 MR. DOUCETTE: And the C.P.R. has
15 made a lot of money and they have not made it for
16 the employees of C.P.R., and they didn't think that
17 the workers in the Royal York Hotel had any right to
18 share in that which had been produced by Canadians
19 working for C.P.R. You see, there is an instance
20 where, in my opinion, perhaps the sacred rights of
21 private property could well be trespassed upon.

22 Now, we were not around when the
23 C.P.R. got its prerogatives, we weren't around when
24 they got that land given to them, the right of way
25 and all the land on either side of it, and so on,
26 we weren't there and when you are familiar with the
27 wages that were paid in the Royal York Hotel to those
28 servants, you would think that there would be no
29 argument but that C.P.R. would say, "They are entitled
30 to most of what they ask for". But you see, here is an

1 instance where the might of industry is used to
2 squelch a poorly organized and a poor section of
3 society and they succeeded.

4 MR. POLLOCK: It is only squelched,
5 I suppose, if I can use your term, because there are
6 other people in the community who want to improve
7 their lot and want to go and work under the conditions
8 that the people who are working there don't want to
9 work under.

10 MR. DOUCETTE: Yes, that is true.

11 MR. POLLOCK: Your fight is not only
12 against the C.P.R., it is against these people too.

13 MR. DOUCETTE: That is true. There
14 are people in society who are opposed to trade unions
15 because the interests of trade unions oppose theirs
16 and that is management's position, I guess. But there
17 are people in society too, who don't know about the
18 trade unions except what they have been told by
19 people who speak for the employers. You see, we
20 know that the majority of people who work in this
21 country are not members of the trade unions. We
22 would like to see them in the trade union. I am
23 sure we will live to see the day when the majority
24 are members of unions. But on the other hand we are
25 not going to permit those -- say we are not going to
26 permit, we are going to fight as hard as we can to
27 prevent those who are not members of trade unions
28 from establishing the conditions under which we work.
29 That has to be the position we take.

30 THE COMMISSIONER: I don't think anyone

1 disputes that. Trade unions - it is dangerous to
2 make these generalizations, but I think the more
3 intelligent-looking people, or the intelligent people
4 of this country accept trade unions as a tremendous
5 instrument that has brought a higher level to the
6 general standards not only of living but of outlook,
7 appreciation of the refinements of civilization. You
8 need not stress that, certainly, before me. I
9 appreciate that. I think I appreciate it just as
10 fully as you do.

11 MR. DOUCETTE: The point we were on
12 at that stage - the point we were trying to make
13 in any case - was that we don't see anything sacred
14 in C.P.R.'s. right to perpetuate its ownership of
15 a sizeable section of the wealth and resources of
16 this country. Now, there are people who argue that
17 this is a very dangerous philosophy, but you see,
18 nationalization has taken place in other countries
19 and there has not been any great social upheaval.
20 For instance, in Great Britain, where the railroads
21 are nationalized, there has not, to my knowledge, been
22 a great deal of harm caused by that nationalization.
23 Unfortunately it occurred at a time in history and
24 by a method that might have well been improved upon
25 or more selectively chosen.

26 MR. POLLOCK: I can tell you, having
27 travelled on the British railways, it certainly
28 hasn't improved the service.

29 MR. DOUCETTE: They had a great deal
30 of improving to do when I travelled on them as well and

1 that was during and after the war.

2
3 (Mr. Doucette continues reading brief from "It appears
4 that..." down to "...consider the proposition." page 7.)

5 THE COMMISSIONER: Well, if you were
6 to go to Australia, you would see how very highly
7 organized labour throughout the country, far higher
8 than yours - by I think it is 60 or 74 per cent,
9 between that - organized labour - picket lines are
10 not thought of. Why? Because of the loyalty within
11 that labour group. The employment of strike breakers
12 is never thought of for the same reason. They are
13 organized almost, one can say, to the hilt. They
14 accept a large measure of compulsory arbitration.
15 They accept that and I think that they probably have
16 as good a level of community living as any part of
17 this earth can show. So you must not assume that
18 because you are annoyed or worked up by the use of
19 the arbitration that it interferes with your liberty
20 of action, you must not assume that that is the
21 necessary condition of satisfaction of masses of
22 people in society. It is in the negative and improved
23 by a very highly achieved society in Australia.

24 Now, I don't for a moment suggest
25 that we could lift that apparatus from Australia
26 and plant it down here in Canada but I am telling you
27 that people do not require the particular prescription
28 that you are speaking about in order to be happy and
29 satisfied.

30 MR. MENARD: Don't you think the laws

1 in Australia are quite different to the laws in
2 Canada?

3 THE COMMISSIONER: They are in some
4 respects but all I am saying is I think it is a
5 mistake to run away from a thing because you don't
6 like the word and it conjures up all sorts of
7 compulsion. You are compelled every day by the laws
8 of the country to restrict your freedom of action.
9 That is all compulsory. It is not even arbitration:
10 It is compulsory imposition.

11 MR. DOUCETTE: If the workers in
12 Australia are happy with the law of Australia, then
13 I wish them well because we would not want to make
14 them unhappy by changing the set-up that they have
15 and if the Commissioner is saying that the labour
16 movement in Australia is happy and content, then I
17 wish we had that Utopian situation here because
18 we have not and if I thought for an instant that
19 compulsory arbitration was the vehicle by which we
20 were going to become satisfied with our lot in life,
21 then I would be in favour of compulsory arbitration
22 but I feel it is not, Mr. Commissioner.

23 THE COMMISSIONER: I am not suggesting
24 that at all. I am simply telling you that these
25 ideas that have never been tested are not understood
26 and that men can -- I would not for the moment suggest
27 the introduction of that generality here. We are
28 not suggesting what ought to be done. We are suggesting
29 the possibilities of things, and all I say is that
30 compulsory arbitration in certain respects is consistent

with acceptability of the very class of men whom you represent.

MR. DOUCETTE: We are afraid that the people who would arbitrate our disputes would not be all that impartial, Mr. Commissioner. One of the fears of arbitration is that, I know most judges set out to be impartial but I don't think anybody in this society is absolutely impartial. I think we have to reflect the environment in which we develop and I have never sat down and had luncheon with the judge, ever.

THE COMMISSIONER: You must come to lunch sometime.

MR. DOUCETTE: I would like to, Mr. Rand, because I am sure I would learn a great deal. On the other hand, I do know that judges do have luncheons frequently at places like the Granite Club and I have never had lunch there either. What I am suggesting here, without any reflection on this Commission, is that the man who sets out to be impartial cannot be impartial. He cannot be absolutely impartial. We have not seen a situation where, for instance, the Chairman of an arbitration board could be absolutely impartial.

THE COMMISSIONER: How would you define "impartiality"?

MR. DOUCETTE: It would be somebody who has an absolutely open mind and can say he is not influenced by one or the other.

THE COMMISSIONER: Would you say that

1 you have at any time achieved that yourself?

2 MR. DOUCETTE: No, I am the opposite
3 of open-minded and the opposite of impartial. I am
4 partial and sectarian to my own interests and the
5 interests of the people whom I try to represent. I
6 can't be otherwise. I have to be like counsel. If
7 I employed Mr. Pollock to defend me, I would not
8 expect Mr. Pollock to be so pleasant and affable as
9 to set the case for the prosecution against me. I
10 would expect him to attend to my defence exclusively,
11 and he could be just as closed-minded or partial
12 as he could possibly be in my defense.

13 THE COMMISSIONER: But that is a
14 different function. That is the advocacy of your
15 case, not his impartial view.

16 MR. DOUCETTE: If we are going to
17 defend ourselves, we have to be very partial. I
18 doubt that a judge could be absolutely impartial if
19 a judge were the compulsory arbitrator but you see,
20 we have not seen what form of compulsory arbitration
21 has been proposed.

22 THE COMMISSIONER: Nobody has proposed
23 that at all.

24 MR. DOUCETTE: The submissions of
25 the employer organizations have shown that.

26 THE COMMISSIONER: The spokesmen for
27 the employers seem to be as adamant against that as
28 you are. They want their liberty back, as you do.

29 MR. DOUCETTE: Where compulsory
30 arbitration has been used in my time, it has been used

1 to the disadvantage of the labour movement. That is
2 the reason we are afraid of compulsory arbitration
3 and would resist it.

4 MR. POLLOCK: I suppose the Rand
5 Formula was to the disadvantage of the trade union
6 movement.

7 MR. DOUCETTE: I think the Rand
8 Formula, at that time, was historically necessary.
9 There had to be a way out of what appeared to be
10 an insoluble problem between management and labour
11 and I think Mr. Justice Rand found at that time, a
12 solution to a problem that was almost insoluble.

13 MR. POLLOCK: Well, he imposed it
14 on both sides.

15 THE COMMISSIONER: It is interesting
16 that both sides, at first, were suspicious of it --
17 both sides. They thought there was some trick here,
18 some conspiracy, something was hidden to entrap us.
19 As it turned out, it was nothing of the kind.

20 MR. POLLOCK: There is, I suppose,
21 a fear of the unknown.

22 MR. DOUCETTE: There is said to be.
23 (Mr. Doucette continues reading brief from "A great
24 deal..." down to "...should be directed." on page 8.)

25 MR. POLLOCK: How does the scab, which
26 I take it is a member of the original employment force
27 which does not support the strike and wants to go
28 back to work, to his job he had before the strike,
29 how does he steal anybody's job?
30

1 MR. DOUCETTE: Well, I don't know
2 if this simil^e has any bearing here, but if I were
3 in the army with a fellow who agreed to join the
4 army and agreed to land on the beach at Normandy
5 with me and then reserved the right, when the Nazis
6 approached to take off and join the Nazis, I would
7 have had a very dim regard for him. You see, in a
8 strike situation, Mr. Pollock, it is a war of sorts.
9 The weapons are different because they are chiefly
10 economic weapons, but it is still a war of sorts.
11 Those who betray or those who sabotage are not very
12 highly regarded by the labour movement, especially
13 those within the labour movement who have made some
14 sacrifices, as modest as they might be, in helping
15 to build it and strengthen it.

16 MR. POLLOCK: I am not saying you
17 ought to like them. I am just saying there is a
18 difference in that paragraph which seems to lump
19 scabs and strike breakers together as thieves by
20 stealing a job. A strike breaker is somebody from
21 outside the employment force who comes in and takes
22 a job that somebody before the strike had. This
23 person, as a scab is a person who goes back to a job
24 that he already had, that he may have had for 20 or
25 15 years, and he is going back to take it up again.

26 MR. CAMERON: Not necessarily. You
27 can have a man belonging to the same union and scabs
28 out in another company using the same type of
29 employees.

30 MR. POLLOCK: Well, I would call him

1 a strike breaker as opposed to a scab.

2 MR. DOUCETTE: In all the years I
3 have been using the term "acab", I don't ever
4 remember sitting down to define it very accurately.
5 Perhaps there is a difference between a scab and a
6 strike breaker but it has not been a matter of
7 deliberation for me. I have a tendency to lump them
8 altogether except, of course, the professionals. We
9 set them apart in another area.

10 (Mr. Doucette continues reading brief from "If a mass
11 picket line ..." down to "...information about the
12 strike." on page 8.)

13
14 There are instances because two or
15 three of us at this table were on the picket line
16 at Colman this winter when a car whipped through
17 the picket line and bowled two of them over and
18 fortunately did not hurt either one of them seriously.
19 The line continued and the lad ahead of me from the
20 Canadian Union of Operating Engineers stopped, and
21 he had about 3 overcoats on because it was a very
22 cold, windy morning and he had a coat over a jacket
23 over something else and he said, "I can't find a match.
24 Have you got a match?". The policeman didn't put his
25 hand on his chest, giving the policeman the benefit
26 of the doubt, but he pushed his hand in his face and
27 I saw it. This is not something that is conjured up.
28 At the Penning Controls picket line a month ago a
29 similar instance occurred there where the tail end
30 of the picket line was almost completing its cycle

1 around. It was not a complete circle. A stationwagon
2 operated by, I believe, the plant manager, came
3 through the picket line and went over the foot of a
4 girl or just over her toe. I think she had on those
5 tapered shoes. They carried her away and I suppose
6 there was a bit of the dramatic being used there
7 because we aren't above that either. They carried
8 her away and the policeman came along and told us to
9 keep moving. He did not say, "Keep moving, boys.
10 You are supposed to keep moving", but "You, move",
11 in that tone of voice.

12 We feel if a judge were able to go
13 out to a picket line with an old overcoat on, and
14 perhaps walk on the picket line for a little while
15 and observe what causes many of those incidents that
16 take place on the picket line, that it would be
17 useful. I don't think judges have to go around
18 picket lines to find out what the complaint is
19 originally that caused the picket line, but the
20 complaints that flow out of the picket line are mostly
21 caused by such petty incidents that, really, we talk
22 about these trained policemen, especially trained
23 in the handling of labour disputes and picket lines
24 and so on. If they were trained in common courtesy
25 it would be a great deal of help because you see, most
26 of the people around us in this society are working
27 people and we are not violent by nature. There are
28 violent people in this society, people who are
29 professionally violent, but we have as much contempt
30 for those people, although many of them come from our

1 own environment, we have as much contempt for them as
2 the courts have. We don't like the pimps, the
3 burglars, the dope pushers and so on. We regard
4 them as outcasts in this society. The impression
5 that seems to be all too wide-spread in society is
6 that workers go on strike and then turn into vicious
7 animals, and that there must be injunctions to prevent
8 them from being vicious even to the point of devouring
9 one another. Most of the working people I know are
10 gentlemen who don't want to go on strike in the first
11 place. But, you see, we are able to instill in them
12 the idea that it is necessary for them to go on strike.
13 I say "we". I mean the older members of the labour
14 movement. We are able to convince them that they
15 must go on strike, not only for their sake but for
16 the sake of society generally, that they have got to
17 go out and improve their status. When that takes
18 place there is a great deal of deliberation that goes
19 into it: "Are we going on strike or not? Would it
20 be better to settle for the conditions we have now
21 or to take the offer which the company has made?".
22 We don't want to go on strike simply to get a week
23 off. Most of us cannot afford, even today, to take
24 a week off. You see, there are some of our people
25 who work during their holidays, they are so tightly
26 pressed financially. The business of going on
27 strike is not where people want to go out and raise
28 hell and burn down buildings and assault non-strikers.
29 That is not our point. It is true that passions run
30 high in labour disputes, but on the biggest picket

1 lines I have ever been involved in, 15 and 18 thousand
2 people massed together, no incidents of violence at
3 all occurred -- and that was in the old country. The
4 point I am trying to make is that working people are
5 not by nature vicious and uncivilized and violent.
6 It is true we are short, perhaps, on the cultural
7 side and on the side of refinement, but we nonetheless
8 are not hostile, anti-social forces.

9 THE COMMISSIONER: No, I told you no,
10 when you don't see anything that arouses you. But
11 you do - and I don't criticize you for it - I
12 probably would be the same - if I am on a picket line
13 and I see a man going back to work who has deserted
14 the cause, you might say. You can't tell me that
15 you take that very easily.

16 MR. DOUCETTE: No, at Canadian Coleman,
17 one of the incidents we mentioned, one morning when
18 two people were arrested, in my opinion it was not
19 necessary to make those arrests. No physical harm
20 had been threatened. People were driving through
21 the picket line. That strike started in October and
22 this was in February, I think, mid-February. It was
23 very cold and those fellows were being paid \$15, \$20,
24 \$25 a week strike pay. They would prefer to be earning
25 a weekly income sufficient to sustain themselves.
26 There was some shouting going on, "Scab" - the usual,
27 I could think of some words that I would not want
28 entered into the record here that were spoken there
29 towards the men who were driving through that picket
30 line. But certainly they were in no danger of physical

1 injury, nor were their cars in any danger of injury.
2 People had gloves on because they had to have them
3 on and there was some thumping going on if they
4 were close enough but, you see, the arrests were
5 caused when the police decided on one occasion to
6 take one of the fellows from the tail end of the
7 picket line and accuse him of having thrown a
8 cigarette butt at the car. Well, if he threw the
9 cigarette butt at the car, he shouldn't have, perhaps.
10 But, you see, if he were throwing a bomb at the car,
11 I could understand, or if he were throwing a rock
12 at a car, but not a cigarette butt. Then there was
13 a little eruption on that picket line and some people
14 shouted and behaved rather abusively towards the
15 police. I think the matter would have silenced
16 itself if perhaps another 20 seconds of it had been
17 let pass. But that happened.

18 (Mr. Doucette continues reading brief from "We know
19 that.." down to "..most extreme cases." on page 9.)
20

21 MR. POLLOCK: Let me add this at that
22 point, that there have been subsequent amendments
23 to the American law after Norris-LaGuardia that
24 prohibit conduct that today is not prohibited by law,
25 by the statute law of Ontario and that is regulated
26 by means of injunction. So I suppose if you are going
27 to take one aspect you have to take the whole aspect.

28 MR. DOUCETTE: Unfortunately, Mr.
29 Pollock, on the legal side I do not propose to argue
30 very much here. I could argue perhaps on the

1 philosophical concept but not before Mr. Rand and not
2 before you. I have not the training for it. But
3 you see, we are putting forward what we know of the
4 Norris-LaGuardia from the address of Mr. John Osler
5 to the C.L.C. Conference on Labour Legislation that
6 took place in Ottawa last September.

7 MR. POLLOCK: We have a transcript
8 of that. Mr. Osler gave it to us.

9 MR. DOUCETTE: What we are saying
10 is that here, when this address was made and in this
11 section of the submission it was pointed out that
12 injunctions are much more difficult for an employer
13 to obtain in the United States than they are here.

14 Now, perhaps that instance that Mr.
15 Rand raised earlier in connection with the coke
16 oven being shut down, or in the case where it is
17 necessary in a hospital to provide hydro power, or
18 some other extreme case, apparently under the Norris-
19 LaGuardia Act injunctions in extreme cases were
20 granted but an employer could not run off and obtain
21 an injunction ex parte or could not run off and
22 obtain an injunction without producing in court, live
23 witnesses to substantiate allegations that he was
24 making in order to obtain his injunction.

25 Now, we thought at that time - and
26 again being not trained in the legal profession and
27 not knowing a great deal perhaps about the legislation
28 there but only what Mr. Osler has stated, we felt
29 that in the absence of injunctions in the United States
30 there had not been any great carnage and bloodshed and

1 so on and we felt that perhaps if they could do without
2 them there, we could do without them here. That
3 was the point we made and I won't bother to quote
4 Mr. Osler because you are more familiar with that
5 section of the law than we are. He did make some
6 proposals which perhaps you might like to comment on
7 and I could read them over.

8
9 (Mr. Doucette continues reading brief from "According
10 to ..." down to "...for consideration." on page 10.)

11 That formulation is a little awkward between the words
12 "Mr. Osler" and "consideration" because what we mean is
13 that these are these proposals that he advanced to
14 the conference which we might well pursue here in
15 Canada as a mitigating influence on the injunction
16 and he would, I think, have this written as the
17 program of the labour movement.

18
19 (Mr. Doucette continues reading brief down to "...to
20 'wildcat strikes'." on page 11.)

21 And I think that there was some justification for
22 this position in the report of Mr. Justice Freedman,
23 a year or more than a year ago, with which I am sure
24 this Commission is familiar and which we do not
25 propose to rehash or elaborate.

26 The next topic headed "Regarding
27 Criticism of the Teamsters' Union Before this
28 Commission".

29 (Mr. Doucette continued reading brief down to "...of
30

1 this Commission:", on page 12.)

2
3 I don't know if the Commissioner has obtained a copy
4 of the press release or if a copy were addressed here
5 from the union. I will read it over quickly:

6
7 (Mr. Doucette continues reading brief down to "...to
8 the Royal Commission." on page 12.)

9 MR. POLLOCK: I might say, at this
10 point that I, in fact, did forward copies of the
11 M.T.I.R.B. brief to Mr. Taggart, and also the copy
12 of the Automotive Transport Association's brief.

13 MR. DOUCETTE: Yes, they have reported
14 since then that they got them.

15 MR. POLLOCK: I sent them by registered
16 mail.

17 MR. DOUCETTE: They were grateful for
18 them. And now, the remainder of the press release:

19 (Mr. Doucette continues reading brief down to "...Signed
20 R. Taggart, President." on page 13.)

21
22 I don't know if the Joint Council in their meeting
23 today are going to change their previous decision
24 not to appear here. We say, Mr. Commissioner and
25 Mr. Pollock, that they are entitled to make that
26 decision and, of course, if we said they were not
27 entitled to make that decision, it would still be made.
28 In this case, you know and I know that there is no
29 compulsion on anybody to appear before this Commission
30 and if the Teamsters' Union sees fit not to appear here,

1 then that is their right. But you see, the very
2 considerable coverage that was given to these
3 accusations, I know that the means of publicity for
4 the projection of emotional statements is very wide-
5 spread and I know that the owners of the Star, the
6 TeV, and the Globe and Mail have an axe to grind too
7 and nobody would suggest they have not. And here I
8 think that there was malice aforethought, perhaps,
9 in continuing the attack upon the Teamsters' Union
10 for a number of reasons. For a while it was almost
11 automatic that the press would carry each day
12 sensational stories about the Seafarers' International
13 Union. There were other times when it was the
14 Canadian Seamen's Union or Millworkers' Union, and so
15 on and we don't pay a great deal of attention to
16 them. Nonetheless, for the uninformed, perhaps the
17 press would carry some of the remarks that were made
18 here in rebuttal to what we said.

19 MR. POLLOCK: I am certain if the
20 Teamsters appeared at the hearing they would certainly
21 get press coverage.

22 MR. DOUCETTE: Whether it would be
23 favourable, Mr. Pollock, I would not be prepared to
24 bet because, you see, it seems to be the style to
25 attack the Teamsters.

26 MR. POLLOCK: I think if you read
27 the newspapers there are some other people other
28 than Teamsters and they all aren't unions that are
29 being attacked in the newspapers.

30 MR. DOUCETTE: Yes, that is true.

1 (Mr. Doucette continued reading brief down to "...our
2 common environment." on page 14.)
3

4 I think Lincoln said this country with its institutions
5 belonged to people who inhabit it.

6 THE COMMISSIONER: What do you think
7 that means?

8 MR. DOUCETTE: I think it means that
9 we have as much claim to the land presently held by
10 the C.P.R. as they have.

11 THE COMMISSIONER: Did you ever read
12 the history of the beginning of the C.P.R.'s. program
13 or the construction of the transcontinental railway?

14 MR. DOUCETTE: I don't believe that
15 I can recall it. I know that I have read it but
16 I don't think that I can recall enough of it.

17 THE COMMISSIONER: Well, you will
18 remember that there was the greatest difficulty in
19 obtaining the private money to invest in that and a
20 great many people said, "You are just going to throw
21 your money away, that country is good for nothing,
22 it is all right for the buffalo but not for human
23 beings and those other forms of animal life that are
24 of value to human beings". We forget the difficulties
25 that the government at that time encountered in getting
26 started. They had to start themselves. They built
27 that line to a point probably almost north of Toronto
28 and then they had to go to the people. What the
29 argument amounts to is that you don't take the position
30 that all of this ownership should be in the government,

1 you don't say that the private ownership is something
2 to be done away with. But if you don't do that,
3 then logically you have got to have such transactions
4 as the C.P.R., and they said "Give us \$25 million and
5 25 million square miles or acres and we will risk our
6 money". Now that was the origin. I would say that
7 this whole civilization is built upon carrying out
8 your promises until the situation occurs when the
9 promise becomes absurd, but not in a case of this sort.
10 What I had in mind was that there was once a grant
11 made to Lord Nelson upon his victory at sea and it
12 was continued, it was to him and his heirs and it
13 was continued until about 1940 something when they
14 did away with it. Well, you might say what did the
15 seventh generation have to do with the victory at sea
16 but when you are dealing with contracts of this sort,
17 put yourself in the position of the man who built the
18 C.P.R. What would you say about a criticism that
19 that ought to belong to the people? You mean, I
20 think, you don't say by reason of expropriation, but
21 simply as a matter of ownership.

22 MR. DOUCETTE: Well, I would say this,
23 Mr. Rand, in a frank answer: You said the man who
24 built the C.P.R. and I am a continuation of the man
25 who built the C.P.R. I am the son or perhaps I am
26 the great grandson of the gandy dancer who died and
27 was buried somewhere out along that right of way. I
28 think I descend from the people who built everything
29 in this country including the railway from the Atlantic
30 to the Pacific.

1 THE COMMISSIONER: We are all the
2 beneficiaries of the past.

3 MR. DOUCETTE: But who actually did
4 the work and who had the money is another thing.
5 You see, because we did not at this time have the
6 money or because our great grandfathers did not have
7 it or because they did not have the foresight, then
8 I don't think there is any justification for perpetuating
9 something that is today absolutely unnecessary,
10 especially where the great resources of Canadian
11 Pacific Railways are being used for the extension
12 of the C.P.R.'s prerogatives, and not to alleviate
13 in any great way the plight of the employees of C.P.R.,
14 as in the Royal York Hotel situation.

15 I know that at one time the land
16 owners in England owned the roads, and I don't think
17 anybody argues any longer that roads ought not to
18 belong to private people.

19 THE COMMISSIONER: You mean the public
20 highways?

21 MR. DOUCETTE: The public roads.

22 THE COMMISSIONER: There are many of
23 them in Canada in which the title remains in the owner
24 but the public has the right of passage over them.

25 MR. DOUCETTE: That is right. Here,
26 of course, many aspects of our society -- I don't
27 think we ought to have a free enterprise -- I don't
28 think we have a free enterprise firefighting system.
29 We have a free enterprise ambulance system which
30 people are beginning to rebel about.

1 THE COMMISSIONER: What do you think
2 a free enterprise fire department would be?

3 MR. DOUCETTE: Where you had to pay
4 your money to have the fire put out.

5 MR. POLLOCK: Where do those exist?

6 MR. DOUCETTE: They don't. I am saying
7 I don't think anybody would defend somebody's right
8 to have a fire department which operated "You pay me
9 and I'll put out your fire". We have, oddly enough,
10 as recently as I know, we have had a free enterprise
11 ambulance system where if you were ill and had to go
12 to the hospital - you will recall there was some
13 publicity given this in the press - they check first
14 to see if you have the money to pay for the ambulance.
15 So, I don't think those rights, where they apply to
16 private property, should really be considered as
17 sacred and should be perpetuated and that in the year
18 2067 A.D., that C.P.R. should still have its flag
19 flying over a good slice of this country.

20 MR. POLLOCK: Who owns the C.P.R.?

21 MR. DOUCETTE: The C.P.R. owns it.
22 I know who does not own it. I don't own it and I
23 suffered under the C.P.R. so I have a particular reason
24 for challenging their sacred right.

25 THE COMMISSIONER: Well, you are
26 prejudiced.

27 MR. DOUCETTE: As I said at the outset,
28 I am prejudiced and partisan. Again, I think more of
29 the people who work should take pride in their origins
30 and should look beyond this point where somebody owns

1 something and nobody is better than they are.

2 MR. POLLOCK: I think what you should
3 do is take the funds that you have to invest and invest
4 them in the C.P.R. and emancipate them. Buy the shares.

5 MR. DOUCETTE: There is a solution
6 that is much more readily available than that: Take
7 the C.P.R. But we do not have the wherewithal to
8 do it, at the moment. But the idea, you see, has
9 to be broadcast, in my opinion, because it is not a
10 question of going out and seizing that which today
11 belongs to the C.P.R. It is a question of society
12 in general doing away with the concept that the
13 C.P.R. has a right forever more to the land that was
14 given them by the government in those exceptional
15 circumstances in those exceptional days.

16 MR. POLLOCK: You talk about the C.P.R.
17 as if there was a man called Mr. CPR sitting there in
18 his little house owning it. C.P.R. is owned by
19 millions of shareholders of little people like you
20 and me, who manage to have some shares in it. There
21 are some larger blocks of holdings, I agree, but what
22 do you do about those little people who invested
23 their money in the C.P.R.?

24 MR. DOUCETTE: Lord Strathcona
25 was one of those little people, was he not?

26 MR. POLLOCK: My mother is too. She
27 has a couple of shares.

28 MR. DOUCETTE: There are little people
29 and bigger people and then there are enormous people.
30 In the ownership of property it is not the little

1 people. You would not want my house, Mr. Pollock,
2 because you likely have a better house to live in.

3 MR. POLLOCK: Don't bet on it.

4 MR. DOUCETTE: But then, I don't
5 particularly want your house but I would like to have
6 a house that had a little more comfort and more
7 facilities for my children. But you see, because
8 I descend from a line of animal that is considered
9 the lower, the inferior strata of society, because
10 I have to work with my hands, and my father had to
11 work with his hands- he only had one hand - then we
12 have got to go through our lives accepting the
13 falsehood and the myth that we are a lower class
14 of animal than the fellow who owns something and
15 produces nothing. We look at the City Hall and that
16 is a nice edifice, but you see, the fellow with
17 dirty hands put it up there, even though it took
18 brains to put the ideas down on paper. You see those
19 other big insurance buildings. I don't want to get
20 into that argument now, although I would like to argue
21 until midnight, but I would not want to take up the
22 time.

23 (Mr. Doucette continues reading brief from "It is the
24 responsibility.." down to "...in wage labour." page 14.)

25
26 There is a book which impressed me at a time when I
27 had a lot more hair on my head. It was entitled The
28 Ragged Trouser Philanthropist, written by a chap named
29 Robert Kershaw an Englishman -- I think he was a
30 house painter. The painter in Kershaw's book was

1 arguing one day on the job with some of his work-mates
2 and they were arguing about the fact that it was cold
3 out and they were short of coal and yet there was
4 a great deal of coal in the country but it belonged
5 to people other than the people who dug the coal. One
6 of the workmen was defending the right of people who
7 own things and the other was defending the right of
8 society to own enough to meet the needs of all society.
9 The old painter said, "You are one of those people
10 who would go around, if somebody discovered a method
11 of taking all the oxygen out of the air and selling
12 it in big tanks, and everybody carried a little tank
13 on his back and went around with his tongue out four
14 inches gasping for oxygen, you would be one of the
15 people who would defend the right of that fellow to have
16 all the oxygen and monopolize it in his tent." You
17 see, there are people who defend this right and think
18 that is the only way things can ever be, but I think
19 the hope for society is that things are not always
20 going to be that way. I think the solution of the
21 strife and the injustices we cry about and the
22 inequities and perhaps the complaints that management
23 have too is another form of society. But I think this
24 Commission was established not to inquire into changing
25 all of society, but simply to straighten out some of
26 the problems we have now.

27 (Mr. Doucette continues reading brief from "Management
28 arrogantly..." down to "...a fair share." on page 15.)

29
30 The next part of our submission, which I suppose

1 a large part of it, about three or four pages, is
2 in defence of trade unionism because we feel that trade
3 unions are essential to society, as we see it, essential
4 to society as it exists today.

5
6 (Mr. Doucette continues reading brief down to "...of
7 labour were shortened.", on page 16.)

8 I have here, a magazine which is pretty
9 dog-eared. It is U.S. News and World Report, and the
10 article is on wage increases in the midst of a
11 depression.

12
13 (Mr. Doucette continues reading brief from "...In all
14 of the.." down to "...than higher wages." page 19.)

15 If we might, Mr. Commissioner, I
16 would like to take a couple of minutes to explain to
17 you why we included this argument here in this submission
18 to this Commission. You see, many of our own members
19 swallow the theory that there is some unwritten law
20 in this society which says if wages go up, then prices
21 will go up and in the end you are no better off than
22 you were when you were getting 25 cents an hour. Well,
23 you recall when the first little 8 and 10 inch tele-
24 vision sets came out, they cost \$600 or \$700, the
25 little plastic cabinet Admiral television sets that
26 were sort of rounded at the corners, 14 inch, they
27 cost in the neighbourhood of \$450. We have better
28 televisions today for less money and wages have
29 increased and there is no doubt and no argument at
30 all that they have increased absolutely and relatively

1 in electrical manufacturing. If there was a law,
2 then it would be a flexible law, because you would
3 say it does not apply there. Well, it does not
4 apply in many other instances. Back in the good old
5 days that I was brought up in, a loaf of bread could
6 be bought for a dime and you could make a phone call
7 for a nickel. My father was employed in those days
8 at 20 cents per hour at Fraser Company Limited in
9 the Miramachi Valley in New Brunswick. He wanted
10 to make a phone call in the good old days and could
11 not afford a phone in the house. He only had to
12 work a quarter of an hour for the nickel to make a
13 phone call. Well, today we have high prices, there
14 is no doubt, but you see, I don't know of anybody
15 who has to work a quarter of an hour today to buy
16 a phone call, and I don't know anybody who has to
17 work half an hour for a loaf of bread. My mother
18 did not buy bread at the grocers. She made it at
19 home because we could not afford it. It was almost
20 a confection, baker's bread.

21 What we are saying here, in essence,
22 is that wage increases are not only useful and not
23 only helpful, but are absolutely essential. We are
24 saying that if we could regard those 150 years that
25 preceded 1945 as a series of undulations with about
26 ten years separating the peaks, the boom here from the
27 boom there, that we had a decline phase and a depression
28 phase and a recovery phase and a boom phase and then
29 the decline phase again and so on, that there has
30 been a change since 1945, and I believe, and the other

members of this delegation may have other ideas, I believe the whole change can be traced to the growing strength of the trade union movement and its ability to win wage increases where, never in that 150 years was it possible to win wage increases; that is while the economy was in the decline phase, while it was going down.

Now, I suppose that while there is no law, while there is no economic concept today that is widely held that would support this, nonetheless, we have to at least be curious about why, in the 22 years since World War II there has not been a serious economic crisis in North America. The most serious was a 13 per cent drop in production in 1957 - 58. Now, if we will consider some of the instances where wages have been cut very effectively on a very wide scale since 1946 by our organized strength, we have been able to keep the wages rising regardless of whether we are in decline, depression or recovery phase in the economy.

Now, it is an interesting problem for me. I don't know how interesting it is for you but you see, if we had been accustomed, as we are in Canada, to four seasons and all of a sudden one of those seasons sort of vanished, blended into the other three and was not an existing season any more, you would begin to wonder what happened to the good old wintertime with all its bad weather.

MR. POLLOCK: I think it is more appropriate to ask what happened to the good old

summertime.

MR. DOUCETTE: On May 18th, yes, I am beginning to wonder too. But you see, I have wondered for some years. I came into the labour movement during the war and just after the war I remembered the oracles of the labour movement in those days saying, "Boys, there is going to be a depression now and it is just around the corner that will make the 1929 to 1937 depression look small in comparison". And I believed it. I was convinced that there was another depression coming because all I knew was depression and the war, the boom brought on by the war and I thought, well, that is likely so. I had been accustomed to a depression life but by 1953 and 1954 the same people were advancing the same arguments and saying, "This is it". The economy would head down and they would say, "Here it is coming now. It was a little late coming, but this is it" and then it would go down and go up sharply again and go beyond its previous high point. So I began to wonder if there was any way of estimating whether we are heading into one of those horrible economic convulsions or whether we are not.

A friend of mine, who has done a great deal of research into this matter, in one period when I was unemployed, asked me if I would do some research into the same question to see if he was not perhaps using figures unconsciously to support his contention that it is not necessary and it is not likely that we are ever going to see another depression of that

1 character again and I thought, well, if we are not,
2 then perhaps those of us in the labour movement who
3 are serious about our dedication to the labour
4 movement should know what the future has in store
5 for us. Are we today on the verge of another 1929-39
6 recession? If not, then why not? And why not, of
7 course, is the reason why we include this here.

8 We feel that if the labour movement
9 seizes this theory and says "The reason there has not
10 been a deep economic crisis is because we have exerted
11 our influence on the economy and we have prevented
12 people going into economic crisis by our actions in
13 winning wage increases whether our economy is going
14 up or down", then, you see, the labour movement
15 would feel vindicated, I think, in fighting for still
16 higher increases and not paying attention as we used
17 to do ---

18 THE COMMISSIONER: But you surely
19 don't say that those are the only two factors, because
20 that would be an easy way to break Great Britain today
21 out of the doldrums.

22 MR. DOUCETTE: Well, Great Britain is
23 in a problem that I think I can't solve except by
24 suggesting that perhaps the government of Great Britain
25 take another look at its actions. You see ---

26 THE COMMISSIONER: You have to take the
27 total position of an economy in relation to other
28 economies, in relation to the needs of your own
29 economy and in relation to importation and that sort of
30 thing and exportation.

1 MR. DOUCETTE: And the productivity
2 of labour.

3 THE COMMISSIONER: I don't know any
4 more difficult question that we have to consider than
5 this question of wages and prices and dividends
6 and that sort of thing.

7 MR. DOUCETTE: We have very few people
8 in the labour movement who are interested in that today.

9 THE COMMISSIONER: That is true and
10 I think you can extend that to the majority of the
11 people generally. It becomes a more or less technical
12 field of inquiry and we have vast numbers almost now
13 of so-called economic experts and they can only make
14 guesses on the influence of the different factors
15 operating.

16 MR. DOUCETTE: Well, we are making a
17 guess that is useful. Besides being rather an
18 educated guess there is one new factor, as we say,
19 and that is that labour increases have been won while
20 the economy is in the decline. It has never happened
21 before, it is the only new factor and therefore,
22 that is likely one of the principal factors in saving
23 the economy from collapse.

24 THE COMMISSIONER: That has simply
25 increased the purchasing power and demand for
26 consumable commodities and it has helped the local
27 market in that sense.

28 MR. DOUCETTE: I think Mr. Keynes
29 would probably roll over four times in his grave if
30 you attributed this to Keynes.

1 MR. POLLOCK: No, I say that is one
2 of the Keynesian theories that if you expand the
3 purchasing power of the country, it increases the
4 general economy.

5 MR. DOUCETTE: You see, I noticed
6 you smiling where I was reading that section of our
7 submission that deals with the employer who is trying
8 to get out from employing so many high paid workers
9 in a period of decline. You see, the economy is
10 heading down, production is going down and he has
11 got a sweeper whom he has to pay an extra 20 cents
12 an hour to because the union has obliged him to pay.
13 So he goes out and orders a machine that will sweep
14 his factory with four fewer sweepers than he previously
15 employed. Well, at the point where he places the
16 order for that machine to do the sweeping to displace
17 those workers, there is a demand for labour in that
18 section of the economy that makes that sweeping machine
19 and it has a paradoxical effect because, you see,
20 management doesn't say, "Well, let us just get a
21 machine to stimulate that section of the economy
22 and perhaps it will help". It is done unconsciously
23 but it is done, nonetheless, and I know plants here
24 in Ontario where relatively good machines, new machines
25 have been thrown out on the scrap heap and new machines
26 have been brought in that could be operated with
27 fewer people and produce more. In the drive for higher
28 profits and in the desire to get rid of higher paid
29 workers, society has done a favour involuntarily,
30 by the people who want to go out and get machines to

displace people.

If we are permitted in a relatively free sense to exercise our economic strikes and then the job will be left to people like Mr. Menard, Mr. Murray, Mr. Springer and I to go out and sell this theory among our people that if we can retain the right to exercise our economic strength, then we are not only doing it for our selfish interests, the selfish interests of working people and our families, but what we are doing in effect, even against the logic and against the desires of the employers, we are doing them a favour too and we are doing everybody a favour by keeping the ball rolling here in the economy of North America. That is, in essence, why we introduce that argument here. It may seem abstract but in the area where we work it is very important because people say, well, why don't we concentrate more on the fringe benefits because if we get a 20 cent an hour wage increase it will all be gone in higher prices anyway? Well, I say to them, "You know when Moses handed down that tablet from the mountain, it didn't say on there as one of the statements that higher wages would produce higher prices", because if you go to General Electric you will find that the wages are higher but the prices are lower.

THE COMMISSIONER: That is the efficiency of production. Technology has brought that about and you couldn't persuade the 40 thousand miners of West Virginia who are walking the streets with nothing to do and nothing within miles of their reach.

1 MR. DOUCETTE: That is true and we
2 feel, of course, that the miners of West Virginia
3 should not be left as the pawns in this business,
4 that somebody should provide for them. We are trying
5 to provide for them by perhaps a more equitable
6 distribution of the wealth of this continent which
7 is adequate to look after those 40 thousand miners
8 and all of our old and infirm and cripples, young
9 and so on.

10 THE COMMISSIONER: You had better
11 address those remarks to Mr. Lewis because he rejected
12 them before and he will reject them again. It is
13 efficiency that he wants, to pay \$25 a day to a miner
14 and at the same time cut 33 per cent off the number
15 of employees.

16 MR. DOUCETTE: Well, John L. Lewis
17 made some mistakes but I think the greatest contribution
18 he made ---

19 THE COMMISSIONER: All I mention that
20 for is to show the complexity.

21 MR. DOUCETTE: And I don't think John
22 L. Lewis understands that either and I don't think
23 the mine owners understand it.

24 THE COMMISSIONER: I think I would go
25 further. I would say very few people, if there are
26 any, understand it in the sense of being able to
27 attribute effectiveness to any particular factor.

28 MR. DOUCETTE: Well, we would like to
29 feel that we play a useful role in society.

30 THE COMMISSIONER: Of course, you do,

nobody is challenging that. You are playing a useful role.

MR. DOUCETTE: Well, the employers figure we are essential except that we should take their \$2 an hour and our 48 hour week which they kindly offer us and then we should mind our own affairs and keep quiet and in the event of a strike, as was submitted here today, that we should not be permitted to work anywhere else.

THE COMMISSIONER: I don't think that is supported by the several thousands of agreements that are signed every five years.

MR. DOUCETTE: That is because, fortunately -- you see, in our opinion, and we are of course biased and prejudiced, we feel that the only reason we have those rights is because we went out and fought for them and won them.

THE COMMISSIONER: There is no doubt about that, yes, but as in everything else, there is a limit to their action, to your action and to the action of everybody in a given direction because you displace them, you destroy a certain relationship which - and by doing so, you bring about almost the contrary factor which tends to destroy what you have achieved. You may demand high wages, that is splendid. And what if you drive the industry out of business? Is the result desirable?

MR. DOUCETTE: Well, if that industry can only survive by employing sweat labour, underpaid labour, then he ought to be driven out of business.

1 THE COMMISSIONER: Well, we had a good
2 illustration in New York. I don't say the whole
3 thing depended on wages, but from one remark of the
4 labour leader there, they either pay this or go
5 bankrupt, which indicates pretty much the effect that
6 he attributed to the increase which was proposed, and
7 those wages there, well you know what they are, they
8 are extremely high. It takes high wages to live in
9 New York, I suppose, but you do reach a point where you
10 can destroy industry.

11 MR. DOUCETTE: The death of the
12 World Journal Tribune had, I suppose, some of its
13 origins in the labour problem and we are not satisfied
14 that the organization of the union in that industry
15 is correct. We think there could be improvements
16 made there, as here. But you see, if the wages of
17 the employees of the late World Journal Tribune were
18 high, I believe that last year General Motors made
19 two and a quarter billion, and their profits are a
20 little high too. If it is a question of what is a
21 distribution of what is produced in this country,
22 if we are going to justify one, then we should take a
23 look at the other. It is a concept rather than a
24 concrete argument. Nonetheless, there are people
25 who would justify General Motors' profits by saying
26 "They made them, they are entitled to them, good luck
27 to them. I hope they make twice as much next year".

28 THE COMMISSIONER: I am afraid we
29 cannot affect that situation. Now, you have reached
30 the summary.

*Nethercut & Young**Toronto, Ontario*

1 MR. DOUCETTE: We have reached the
2 summary and it is now 25 minutes to 6:00 and this
3 won't take very long.

4 (Mr. Doucette continues reading brief from "We call for
5 ..." down to "...of the contract." on page 20.)

6
7 We are affiliated with the Ontario Federation of Labour.
8 I am from the ironworkers' union, and when the O.F. of L.
9 made its submission, they were submitting it for all
10 their affiliates on this point as well, and we agree
11 entirely with their submission on item 3.

12 (Mr. Doucette continues reading down to "future
13 interdependant." on page 20.)

14
15 Mr. Osler points out that the right to picket in some
16 provinces is poorly defined and in other provinces
17 hardly defined at all.

18 (Mr. Doucette continues reading brief down to "....
19 to restriction." on page 21.)

20
21 I am not going to follow the formal
22 last paragraph that is there. I want to say we
23 are pleased that the members of the Port Council
24 instructed us to come here, and we came here with
25 some trepidation. We thought we were going to be
26 given a bad time because the newspapers had indicated
27 that the Commissioner was giving people like Dave Arche
28 like ourselves, a bad time. Well, we did not get a
29 bad time here today. We are glad we came. We
30 addressed this submission "The Rand Commission", but we

1 directed it to the rank and file people in the unions
2 too, because we came here, as I said, hoping for the
3 best but expecting less than the best, not because
4 of the Commission, but because of the government that
5 appointed this Commission, and we are, of course,
6 prejudiced against the government of Ontario at the
7 moment.

8 So, thanks to Commissioner Rand for
9 his interest and thanks to Mr. Pollock for not lighting
10 into us on the legal submission that we made.

11 THE COMMISSIONER: Mr. Doucette, nobody
12 has been treated any differently from you.

13 MR. DOUCETTE: I thought I detected
14 some sympathy by the Commissioner for the previous
15 submission.

16 THE COMMISSIONER: There might be a
17 prejudice in your favour because I think you came
18 from New Brunswick.

19 MR. DOUCETTE: Are you a New Brunswicker?

20 THE COMMISSIONER: Yes.

21 MR. DOUCETTE: Well, you see, that
22 explains a great deal. Thank you very much.

23 MR. MENARD: Thank you very much, Mr.
24 Commissioner.

25 THE COMMISSIONER: We are obliged to
26 you, thank you very much.

27 MR. POLLOCK: The Commission is
28 adjourned until 10:00 o'clock tomorrow morning.

29 ---Adjournment.
30

BINDING SECT. OCT 20 1967

